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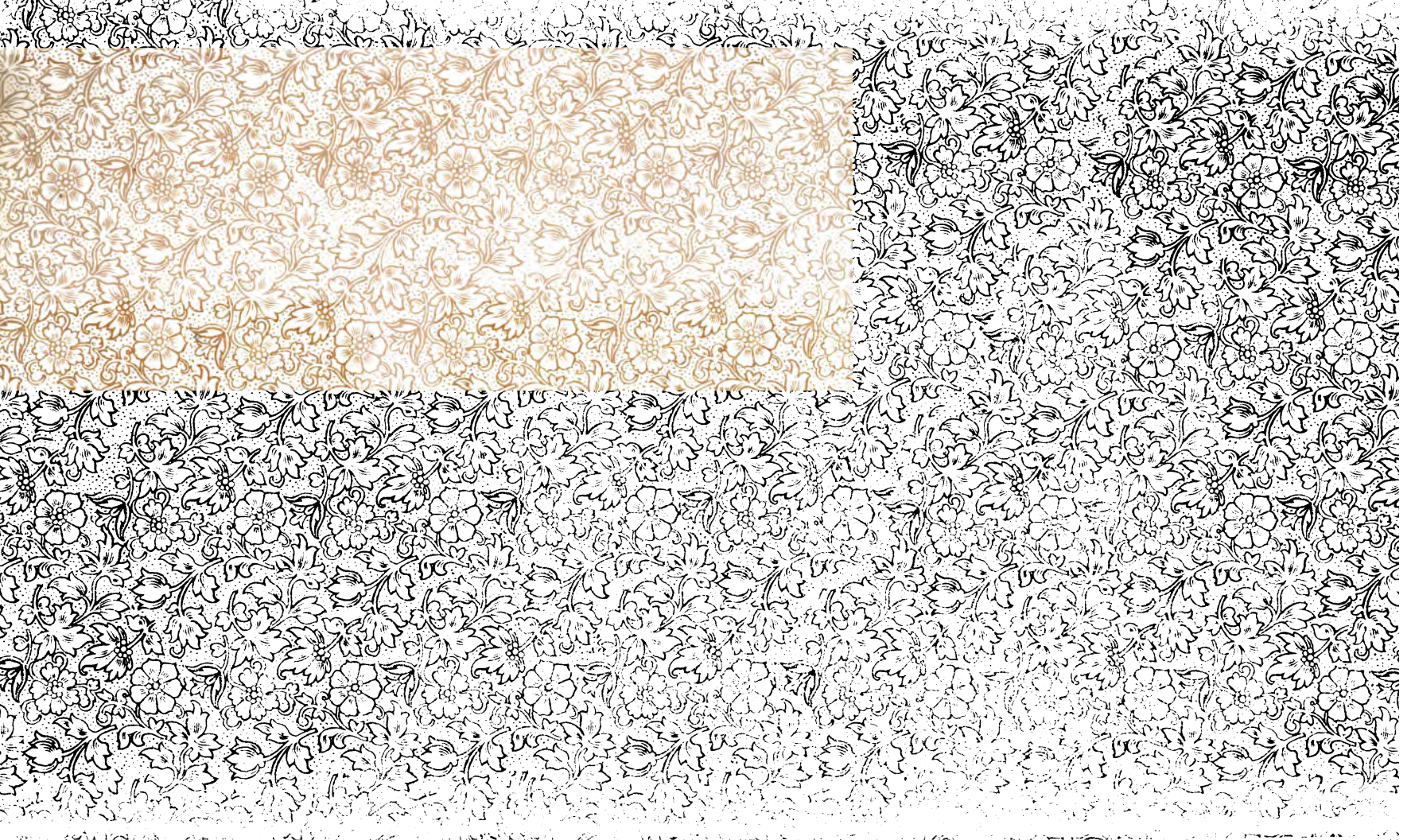

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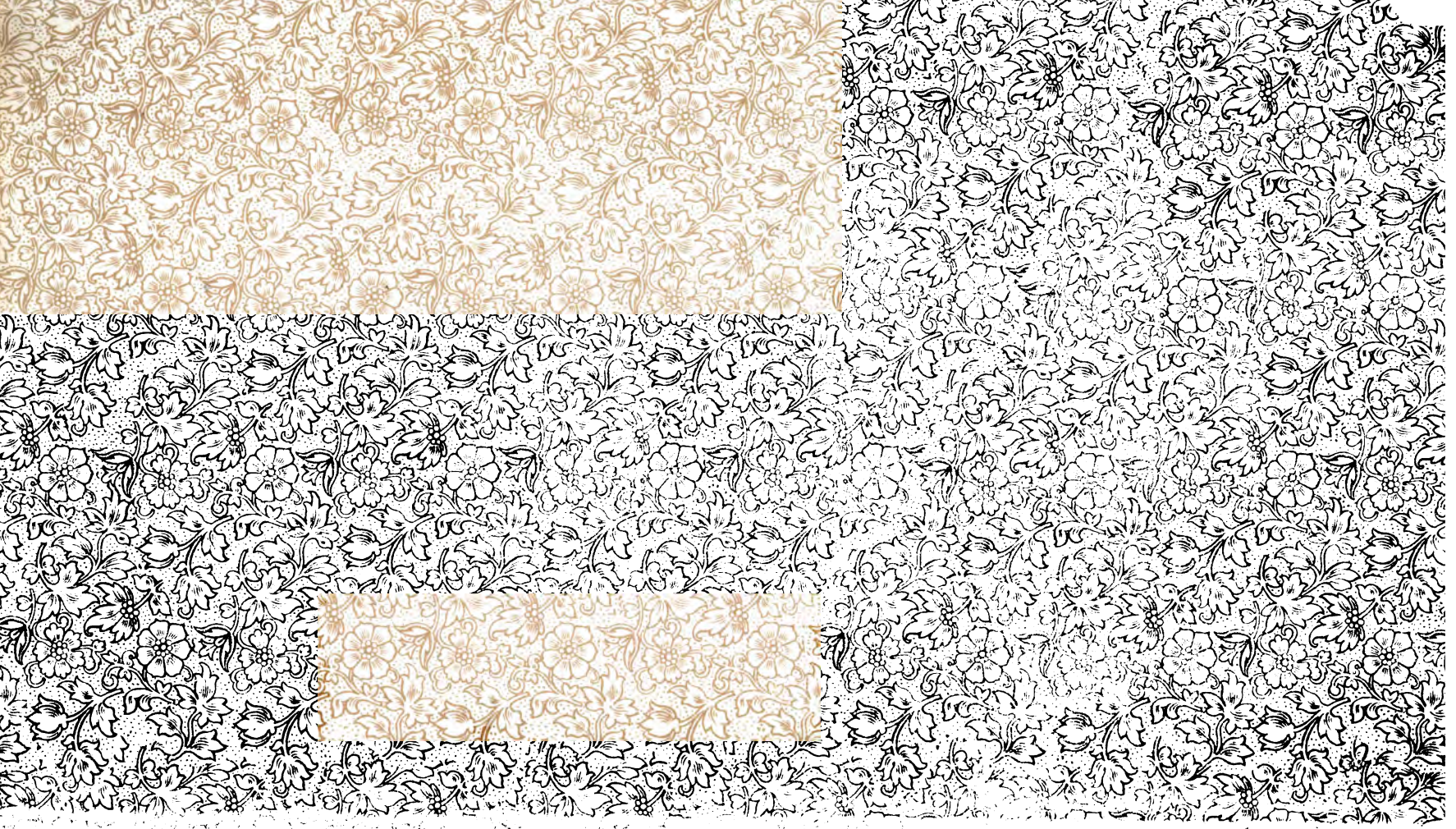

NATIONAL LEGISLATION CONCERNING EDUCATION

ITS INFLUENCE AND EFFECT IN THE PUBLIC LAND STATES EAST OF THE MISSISSIPPI RIVER

ADMITTED PRIOR TO 1820

BY

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PREFACE

THE following paper constitutes a portion of an investigation begun by the writer in October, 1897, at the suggestion of Professor Butler. In order to adapt the mass of material at hand to the space limitations of a thesis, it has become necessary to restrict the treatment of the general subject of *National Legislation concerning Education in the United States* in two directions. Hence, just a few well-defined movements are considered in Part I., in order that the reader may obtain a general notion of the nature and spirit of such legislation. This part is to be considered merely as a tentative outline of a larger paper now in preparation. Part II. is limited to a treatment of the influence and effect of congressional enactments relating to education in the six public lands States east of the Mississippi admitted prior to 1820, and may be considered to be relatively complete for the States treated.

The writer's orientation is determined by the acts of Congress. Consequently, merely so much of individual State legislation has been introduced as would function in interpreting and binding together congressional acts. It is believed that under each State considered will be found all the acts of Congress relating to education in such individual State, together with important subsequent State legislation relating to those acts.

In the complete investigation, soon to be published, most of the topics merely mentioned in Part I. will receive a more adequate treatment; while a similar method will be applied to all the States in the Union as has been applied to the six States herein considered.

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PART I

NATIONAL LEGISLATION CONCERNING EDUCATION

INTRODUCTION

QUESTIONS of legislation in their last analyses, and from a practical point of view, resolve themselves into considerations of expediency, and are, more or less, either positive or negative responses to public opinion. Public opinion, moreover, shifts its point of view with changing conditions in the social, economic, and intellectual life of a people; and these conditions, furthermore, are closely dependent upon the character of the natural sectional divisions of a country. Hence arise opposing view-points on various questions of national policy; it becomes the supreme function of the opposition to oppose; and policies are more often discussed from these standpoints than from any notion of the intrinsic merits of such policies.

The characteristics manifested by congressional legislation in general are for that reason characteristic also of legislation concerning education. Thus there have existed in Congress from the earliest days down to the present, the two opposing view-points, the one holding that legislation concerning education constitutes an implied power of Congress amply covered by the "general welfare" clause of the Constitution, while the other point of view has constantly gravitated about the central thoughts promulgated by the States'-rights adherents that such legislation is unconstitutional, since the power of legislation concerning education is not enumerated among the expressed powers of Congress, and that such legislation is funda-

mentally opposed to the doctrine of State autonomy in administering the purely local affairs of the State, in contradistinction to national centralization.

With these facts and factors kept clearly in mind, much that might otherwise appear obscure and contradictory in the variations of congressional attitude and action will become easily intelligible. These principles furnish the key to the interpretation of such a question as, why the attempts to distribute the treasury revenues in the late twenties and early thirties partly for purposes of education became abortive, and why the surplus revenue act of 1836, the logical outcome of these earlier endeavors, was passed. It will become evident why the various endeavors of the sixteen landless States to secure an equitable distribution of the sales of public lands for education, have never been successful. Furthermore, to cite a more familiar example, it will be readily understood why the agricultural and mechanical college endowment act was vetoed by President Buchanan, and why a somewhat similar act was readily approved by President Lincoln.

As has been previously indicated, legislation shifts its point of view with changing conditions in the social, the economic, and the intellectual life of a people. It is to these subtle and ever varying forces rather than to congressional initiative that we are ultimately to look for the causes of the evident tendency towards national centralization in the United States. A striking illustration of this fact is to be found in the changed views concerning constitutional interpretation evidenced by various Southern States after the Civil War. Confronted with changed conditions in each of these three spheres of life, and fearful of the consequences issuing from the evils of ignorance of a large mass of the population, many petitions were forwarded to the General Government praying for aid in promoting the education of the people. It is significant to note that the public opinion of these States changed radically from an ardent advocacy of the old strict constructionist and States'-rights views, to a firm

enunciation of the advisability and expediency of a liberal interpretation of the powers of the General Government to legislate concerning education, under, however, State control. Legislation, then, "is the science of compromise and adjustment. It has no syllogisms and no mathematical demonstrations. If practical advantages result, either from observance or from violation of established maxims, it is enough."[1]

Throughout the history of our national existence, as has been implied, the one essential and central thought that has predominated in congressional debates on various projects entailing national aid for education, has been the maxim that it is the supreme duty of each State to supervise the education of its future citizens. And notwithstanding the growth of the national idea, the rights and privileges of individual States have been jealously guarded whenever a tendency seemed manifest to empower the General Government to exercise a national control over education. This attitude of devotion to the doctrine of State autonomy in ministering the educational affairs of the State has been not sectional, but national. This attitude is probably but a reflex of the flexibility and variability of the American national character, which seems to attain its greatest freedom and efficiency in the exercise of individual initiative by the various sovereign States comprising the Union. It is this lack of a national system of education that fundamentally distinguishes the educational administration of the United States from the educational administration characteristic of the European Powers. And it is probably to this lack of national system, and to the existence of many State systems varying in detail but striving towards similar essential national ideals, that one should ascribe the ultimate efficient adaptability which naturally results from many State systems ministering to peculiar State needs.

While the attitude of the sovereign States has thus been a

[1] J. J. Ingalls, in *North American Review*, April, 1886, 381.

jealous guarding of their rights to administer their own educational affairs, there has, nevertheless, always existed among many of them the opinion that it is a proper function of the General Government to encourage education within the various States. Accordingly, we find that as early as 1785, during the pre-constitutional period, measures were passed by the old Congress encouraging education; and since that date up to the present time Congress has frequently furthered the cause of education in various States in diverse ways.

The aid thus extended may be roughly classified as (1) direct or immediate, and (2) indirect or mediate. Under direct aid are included such benefits accruing to education that result from direct and specific national grants for educational purposes; under indirect aid are included such benefits accruing to education that result from general and unspecified national grants for State purposes, all or a portion of which grants have, in turn, been devoted by such States to purposes of education. Under the former class will be considered the grants for elementary, secondary, and higher education, as contained in the enabling, the admission, or the different special and general acts pertaining to the several States; while under the latter class will be considered the Surplus Revenue Act of 1836, the Distribution Act of 1841, the Swamp and Overflowed Lands Act of 1850, and various special acts. With but very few exceptions, it may be added, all Government aid in behalf of education has consisted either of grants of public lands, or of moneys derived from the sales of such lands.

CHAPTER I

LEGISLATION BY THE CONGRESS OF THE CONFEDERATION

THE public lands which constitute the ultimate sources whence have risen Government grants for education from the earliest times down to the present, have had a threefold origin, viz., by conquest, by cession, and by purchase. It was about the question of the ownerhip of the crown lands situated north of the Ohio, west of Pennsylvania, and east of the Mississippi, that the conflicting opinions between the large land-owning States and the small landless States arose during the progress of the Revolutionary War. The large land-owning States based their claims to vast areas of unoccupied territory on various general, ill-defined, and usually conflicting grants made by Great Britain in the colonial days, while the small landless States contended that the territory wrested from British dominion by virtue of the united struggles of the collective colonies, was a common treasure to be disposed of for the common benefit of all.[1]

The attention of the country seems first to have been definitely directed to these conflicting claims by Maryland, in June, 1778.[2] By resolution of Congress of September 6, 1780, the land States were requested to surrender their claims to the disputed territory; and in the following October such lands as might be ceded to the United States were pledged to "be dis-

[1] For an account of this period see Donaldson, *Public Domain*, Chapter III, "The States'-Rights Conflict over Public Lands." James C. Welling, in *American Historical Association Papers*, Vol. III, 167–188.

[2] Donaldson, *Public Domain*, 60.

posed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom and independence as the other States."[3] The controversy that had been engendered raged with unwonted fierceness. It furnished the *raison d'être* for the delay in securing the full ratification of the Articles of Confederation by all the States; and Maryland finally accepted the Articles, but with the understanding that the unoccupied lands to the west should form a fund for the common benefit of all the States.[4]

By 1802, all the large land-owning States had ceded to the General Government the tracts of territory out of which were later formed the States of Kentucky, Tennessee, Ohio, Indiana, Mississippi, Illinois, Alabama, Michigan and Wisconsin. By purchase, the United States later acquired the district out of which was formed the State of Florida, and the southern parts of Mississippi and Alabama. It is with these States, excepting Kentucky, which contained no unoccupied public lands on admission, that this investigation is concerned.

While the conflict over the question of the ownership of the western lands was still at its height, a plan was in contemplation to found a new State west of the Ohio, to be settled by officers and soldiers of the Federal army who should associate for such purposes.[5] Colonel Timothy Pickering, of Massachusetts, in a letter of April 7, 1783, mentions various propositions to be submitted to Congress concerning such new State, among which occurs the paragraph that "all surplus lands shall be the

[3] Donaldson, *Public Domain*, 64.

[4] In compliance with the resolution of September 6, 1780, claims to lands lying northwest of the Ohio river were surrendered by New York, 1781; Virginia, 1784; Massachusetts, 1785; and by Connecticut, 1786; while claims to lands south of the present State of Kentucky were surrendered by South Carolina in 1784, by North Carolina in 1790, and by Georgia in 1802. Donaldson, *Public Domain*, 65.

[5] Pickering, I, 457, 546.

common property of the State, and disposed of for the common good; as, for laying out roads, building bridges, erecting public buildings, *establishing schools and academies*, defraying the expenses of government, and other public uses."[6] Associated with Colonel Pickering in this enterprise was General Rufus Putnam, to whom a rough draft of the provisions to govern the new State was submitted. A petition signed[7] by officers of the Massachusetts, Connecticut, New Hampshire, New Jersey and Maryland lines was sent by Putnam to General Washington, requesting the latter to use his good offices in securing the patronage of Congress in furthering the founding of such a State by the granting of suitable quantities of lands to settlers.[8] Accompanying this petition was a letter written by Putnam (June 16, 1783), wherein he makes mention of the advisability of an allowance by Congress of "3,040 acres for the ministry, schools, waste lands, rivers, ponds and highways in each township."[9] Both letter and petition were the next day referred to the President of Congress by Washington;[10] but the matter was never definitely acted upon by the committee to whom the subject was referred.

In the meantime Colonel Bland, a representative from Virginia, introduced a resolution to the effect that Congress accept the proposition of Virginia of January 2, 1781, for the cession of her western lands; that land be granted the officers and soldiers in lieu of certain pay due them; that States be erected out of the territory ceded, and that the rents, shares, profits and

[6] Pickering, I, 548.

[7] Of the 285 names, 235 belonged to New England, 36 to New Jersey, 13 to Maryland, and 1 to New York. Of the New England names, 155 belonged to Massachusetts, 34 to New Hampshire, and 46 to Connecticut. Quoted by B. A. Hinsdale, "Old Northwest," 267; from the *Ohio Archæological and Historical Quarterly*, June, 1887, 46.

[8] Bancroft, I, 314.

[9] Walker, *History of Athens Co., O.*, 34, 36.

[10] Bancroft, I, 315.

produce of every 10,000 acres out of each 100,000 acres "be appropriated to the payment of the civil list of the United States, the erecting frontier forts, the founding of seminaries of learning, and the surplus after such purposes (if any) to be appropriated to the building and equipping a navy, and to no other use or purpose whatever."[11] This motion was referred to the grand committee of the 30th of May, 1783, and experienced a legislative death in the committee. This motion is significant as being the first mention in Congress of Government aid for education.

As a consequence of the Virginia cession, "An ordinance for ascertaining the mode of locating and disposing of lands in the western territory" was reported by a committee, of which Thomas Jefferson was chairman, on May 7, 1784.[12] This bill came up for a second reading on May 28, and the question to take the bill into consideration was lost.[13] Under date of March 1, 1785, Colonel Pickering wrote to Mr. Elbridge Gerry, a member from Massachusetts, requesting to be informed what plan Congress would probably adopt in disposing of the land northwest of the Ohio.[14] Mr. Gerry forwarded to Colonel Pickering a draught of the ordinance of the previous year, and being about to return home, requested Colonel Pickering to communicate his views and criticisms to Mr. Rufus King, a member from Massachusetts. Under date of March 8, 1785, Colonel Pickering communicated at length with Mr. King, commenting on the proposed ordinance, and noting, among other things, "I observe there is no provision made for ministers of the gospel, nor even for schools and academies."[15]

On March 4, 1785, the ordinance of the previous year was read the first time in Congress; and on the following 16th, after debate, was referred to a committee composed of one

[11] Bancroft, I, 313. [12] *Journals of Congress*, VIII, 205.
[13] *Ibid.*, 242. [14] Pickering, I, 504. [15] *Ibid.*, 509.

member from each State.[16] The committee thus appointed reported on the following April 14th, "An ordinance for ascertaining the mode of disposing of land in the western territory." This ordinance differed from the one of the previous year in various respects, among others, containing the paragraph that "There shall be reserved the central section of every township, for the maintenance of public schools; and the section immediately adjoining the same to the northward for the support of religion. The profits arising therefrom in both instances, to be applied forever according to the will of the majority of male residents of full age within the same."[17] On May 20th, the ordinance was finally adopted, having gone through numerous excisions and amendments during the course of congressional debate. The clause pertaining to aid for religion was stricken out,[18] and in its final form the ordinance provided that "there shall be reserved the lot No. 16 of every township, for the maintenance of public schools within the said township."[19] *This ordinance of May 20, 1785, thus contains the first definite Government enactment concerning grants of land for educational purposes.*

To return to our previous narrative, we may note that under date of April 15th, Mr. King wrote to Colonel Pickering, "your ideas have had weight with the committee who reported this ordinance."[20] So far as the sifting of the evidence at hand would lead one to infer, it is probably to Timothy Pickering of Massachusetts, more than to any other man, that we are to ascribe that far-reaching influence, in the guise of comment and criticism, which led to the incorporation of many desirable features into the ordinance of 1785, and especially to the establishment of the precedent which has resulted in the continued support of education by the General Government from early times down to the present. Unfortu-

[16] *Journals of Congress*, IX, 69, 80. [17] *Ibid.*, 135.

[18] *Ibid.*, 135–137. [19] *Ibid.*, 171; *Public Lands, Laws*, 13.

nately, details of the proceedings of the Congress under the Confederation have not been preserved. But we may be reasonably assured that the committee in charge of the ordinance did not act favorably upon Pickering's suggestion that provision be made for education, purely and simply from any abstract ideals of or concrete zeal for education. The impelling motive seems to have been more a consideration of economics than a consideration for education; for in a letter of April 15, 1785, written to General Washington by William Grayson, a member of the ordinance committee from Virginia, the latter writes, "The idea of a township, with the temptation of a support for religion and education, holds forth an inducement for neighborhoods of the same religious sentiments to confederate for the purpose of purchasing and settling together."[21] The country was then in great need of revenue. The western lands furnished the only ready and common fund for the extinguishment of the Revolutionary debt. Hence there could be no objection to the incorporation into that ordinance of any reasonable provision that might accelerate the sale of the public lands.

The petition sent to Congress by the officers of the Continental line of the army on June 16, 1783, was really the first step towards the foundation of the Ohio Company of Associates organized in Boston, March 3, 1786, for the purpose of purchasing and colonizing a large tract of land between the Ohio and Lake Erie.[22] A year was allowed for the purpose of securing subscriptions, and on March 8, 1787, Samuel H. Parsons, Rufus Putman and Manasseh Cutler were chosen directors to secure from Congress favorable terms for the purchase of the new territory and the settlement of a new State. On the 13th of the following July, Congress passed the famous "Ordinance for the government of the territory of the

[20] Pickering, I, 511.

[21] Bancroft, I, 425.

[22] *Life of Manasseh Cutler*, I, 178.

United States northwest of the river Ohio," Article III. of which provided that "Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[23] Dr. Cutler, to whom the Ohio company had intrusted its business negotiations with Congress, had been on the ground since the 5th, and was energetically working to secure for his associates the most favorable conditions possible. To him were submitted rough drafts of the ordinance in its earlier stages, and strong evidence is at hand to indicate that it was owing to his suggestion that the third article relating to religion, education, and slavery was incorporated into the ordinance.[24] The ordinance of July 13th prepared the way for the sale of lands in the western territory to the Ohio Company. On July 23d, the report of a committee, which had been variously amended owing to the persistence of Dr. Cutler in securing the best possible conditions of sale, defining the "powers to the Board of Treasury to contract for the sale of western territory," provided: "The lot No. 16 in each township or fractional part of a township, to be given perpetually for the purposes contained in the said ordinance [*i. e.*, Ordinance of 1785]. The lot No. 29 in each township or fractional part of a township, to be given perpetually for the purpose of religion. * * * Not more than two complete townships to be given perpetually for the purpose of an university,[25] to be laid

[23] *Public Lands, Laws*, 22.

[24] *North American Review*, Vol. 122, 261.

[25] In a letter written August 7, 1818, Dr. Cutler says: "The fact is, the people of Ohio are wholly indebted to me for procuring the grant of those townships [for the University] and the ministers' lands, in the Ohio Company's purchase; and indeed for similar grants in Judge Symmes's purchase. When I applied to Congress for the purchase, no person, to my knowledge, had an idea of asking for such grants. . . . I had previously contemplated the vast benefit that must be derived from it in future time, and I made every exertion to obtain it. . . . It is well known to all concerned with me in transacting the business of the Ohio Company, that the establishment of a University was a first object, and lay with great weight on my mind." *North American Review*, April, 1876, 263.

off by the purchaser or purchasers, as near the centre as may be, so that the same shall be of good land, to be applied to the intended object by the Legislature of the State." [26]

The committee's report was accepted, and the Board of Treasury was accordingly ordered to enter into contract for the sale of the territory described. On the 26th inst. a letter from Manasseh Cutler and Winthrop Sargent, in behalf of the Ohio Company, stipulated various minor conditions of sale, among them occurring the proposal that " the lands assigned for the establishment of an university (to) be as nearly as possible in the center of the first million and a half acres we shall pay for; for to fix it in the centre of the proposed purchase, might too long defer the establishment." [27] On the following day Congress accepted the various terms outlined in the aforesaid letter.[28] This act formulates the first definite *grant* of the United States Government for common school and university purposes. The ordinance of May 20, 1785, it will be remembered, merely provided that the No. 16, in every township, should be *reserved* for the maintenance of the public schools within such township.

Later in the year a petition was presented from John Cleves Symmes, dated August 29, 1787, praying Congress to direct that a contract be made with him and associates " in all respects similar, in form and matter, to the said grant made to Messrs. Sargent and Cutler, differing only in quantity and place where, and instead of two townships for the use of an university, that one only be assigned for the benefit of an academy."[29] On October 2, the above petition was referred to the Board of Treasury to take order. With this legislation the activity of the old Congress under the confederation in matters educational ceases. Our point of view now shifts to the Federal Convention which framed our present Constitution in 1787.

[26] *Public Lands, Laws*, 25.

[27] *Public Lands, Laws*, 26.

[28] *Ibid.*, 27.

[29] *Journals of Congress*, XII, 226.

While the legislation outlined in the pages immediately preceding was being enacted in New York, the Constitutional Convention which organized on the 25th of May, 1787, with George Washington as President, was holding its sessions in Philadelphia. On the 29th of May, Mr. C. Pinckney, of South Carolina, laid before the convention the draft of a constitution, which was submitted to a committee on the 23d of July. The fourteenth section of the ninth article of this draft provided that "the legislature of the United States shall have the power . . . To establish and provide for a national university at the seat of government of the United States."[30] The committee reported a draft for a constitution on the following August 6th; but no mention is made in their report of the above-mentioned educational power.[31] On Saturday, August 18, the following additional powers, proposed to be vested in the Legislature of the United States, having been submitted to the consideration of the convention, it was moved and seconded to refer them to the committee to whom the proceedings of the convention were referred, which motion passed in the affirmative.[32] Among the propositions thus referred occur the following:

To establish a university. [By Mr. Madison.]

To encourage, by proper premiums and provisions, the advancement of useful knowledge and discoveries.

To establish seminaries for the promotion of literature, and the arts and sciences.

To establish public institutions, rewards and immunities, for the promotion of agriculture, commerce, trade and manufactures.

In the report of this committee, submitted on 22nd of August, no reference occurs relating to any of the educational provisions proposed on the 18th.[33] On September 12th, the

[30] Elliot's Debates, I, 147.

[31] *Ibid.*, 223.

[32] *Ibid.*, 247.

[33] Elliot's Debates, I, 256.

committee on revision reported a constitution as revised and arranged, which, with a few changes, became the present Constitution, and which contained no enumerated and expressed power of Congress to legislate concerning education.[34] Two days later, while the draft submitted by the committee was being debated, Mr. Madison (Vir.) and Mr. Pinckney (S. C.), moved to insert in the list of powers vested in Congress, a power "to establish an university, in which no preference or distinctions should be allowed on account of religion."[35] Gouverneur Morris (N. Y.) held that such expressed power was unnecessary; that the exclusive power at the seat of government would reach the object. On the question being put, Pennsylvania, Virginia, North Carolina and South Carolina voted in the affirmative—4; while New Hampshire, Massachusetts, New Jersey, Delaware, Maryland and Georgia voted in the negative—6; Connecticut stood divided. On the 17th, the Constitution was ratified by all but three of the members of the Convention. During the following year the requisite number of nine States had ratified the Constitution, and on September 13, 1788, the old Congress proceeded to organize the government under the Constitution. With the inauguration of General Washington as President, on April 30, 1789, this organization was completed, and our present national existence entered into being.

[34] *Ibid.*, 297.

[35] *Madison Papers*, III, 1577.

CHAPTER II

ATTEMPTS TO FOUND A NATIONAL UNIVERSITY

During Washington's Administration

THAT lofty ideals of national responsibility and exalted patriotism constituted a moving force in the first President's message, January 8, 1790, is evidenced by that portion of the address wherein Washington said, "Nor am I less persuaded that you will agree with me in opinion that there is nothing which can better deserve your patronage than the promotion of science and literature. . . . In [a country] in which the measures of government receive their impressions so immediately from the sense of the community as in ours, it is proportionably essential. To the security of a free constitution it contributes in various ways—by convincing those who are intrusted with the public administration that every valuable end of government is best answered by the enlightened confidence of the people, and by teaching the people themselves to know and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority; between burthens proceeding from a disregard to their convenience and those resulting from the inevitable exigencies of society; to discriminate the spirit of liberty from that of licentiousness—cherishing the first, avoiding the last—and uniting a speedy but temperate vigilance against encroachments, with an inviolable respect to the laws. . . . Whether this desirable object will be best promoted by affording aids to seminaries of

learning already established, by the institution of a national university, or by any other expedients, will be well worthy of a place in the deliberations of the Legislature."[1]

On the following May 3rd, Mr. Smith (S. C.) moved that the above portion of the President's speech be referred to a select committee of the House.[2] But Mr. Stone objected, inquiring what part of the Constitution authorized Congress to take any steps in a business of this kind? We have already done as much as we can with propriety, he continued; we have encouraged learning by giving to authors an exclusive privilege of vending their works; this is going as far as we have the power to go by the Constitution. Mr. Sherman remarked that a proposition to vest Congress with power to establish a national university had been made in the Constitutional Convention; but it was thought sufficient that this power should be exercised by the States in their separate capacity. Mr. Page wished to have this matter determined. He supposed that Congress had a right to promote science and literature; but if, on investigation, it should appear that no such right vested in Congress, he should consider it an essential defect in the Constitution, and should be in favor of proposing an amendment to remedy the defect. The House adjourned without coming to a decision on this motion.

In this brief debate we perceive the essentials of the two view-points which characterize all later debates in Congress concerning this question of Government aid for education. The last rock of refuge to which the advocates of either of these two views have clung with unwavering pertinacity during almost eleven decades of legislative storm and stress, has been the fundamental question, Is such national legislation in behalf of education constitutional? It is interesting to note therefore, that the first recorded debate in Congress concerning

[1] Richardson, I, 66; also, replies of the Senate and of the House, 68, 69.

[2] *Annals*, II, 1603.

an educational proposition, contains in miniature the substance of subsequent debates about the same general question.

In his eighth annual message (December 7, 1796) President Washington again recurred to the question of the expediency of establishing a national university, and urged upon Congress the necessity of a sober and thoughtful consideration of the many advantages to be derived from the establishment of such an institution.[3] On motion of Mr. Madison (Va.), this portion of the President's message was referred to a committee (Dec. 12).[4] Two weeks later the House resolved itself into a committee on the establishment of a national university.[5] It was observed by Mr. Nicholas that the time was inopportune for the establishment of such an institution; that it would be necesary to open funds for its support. In fact, if the House once entered into this matter, he said, the responsibility would fall on it to keep up the institution. Furthermore, the measure[6] was so covered as not to show half the mischief which would attend it. He believed that there was no Federal quality in knowledge, and that no Federal aid was necessary to the spreading of it; furthermore, every district of country was competent to provide for the education of its own children. On the other hand, Mr. Harper and others indicated that the import of the resolution was to enable the Commissioners of the District of Columbia to be incorporated, in order that they might be legally qualified to receive funds for the support of the institution. On the following day a motion to postpone the taking of a final vote on the subject was carried by a majority of one vote, the ballots standing 37 for the motion, to 36 against the motion.

[3] Richardson, I, 202. See also the reply of the Senate, p. 205.

[4] *Annals Congress*, VI, 1600. [5] *Ibid.*, 1697 *et seq.*

[6] Given in *Annals Congress*, 4 C., 2 S., 1591.

Subsequent Attempts to Found a National University[7]

This favorite idea of President Washington to establish a university on a national foundation has been at subsequent periods of our legislative history revived in various guises. From what follows it will be observed that until 1825 this question was usually a source of complimentary legislation in deference to suggestions occurring in the messages of the Presidents; that the question was partially revived in 1836, when the method of disposing of the Smithson bequest was under consideration; and that the most vigorous discussion of this measure has taken place during this generation, from 1867 to the present day, indicating, to a certain degree, the influence on education of the growth of the national ideal.

In 1803[8] and in 1805,[9] Samuel Blodget, late supervisor of the District of Columbia, presented memorials to Congress relative to the establishment of a national university by the General Government, both of which memorials were referred to committees, but upon which no subsequent action was recorded. The sixth annual message of President Jefferson (December 2, 1806), refers to this question in the following words: "The present consideration of a national establishment for education particularly is rendered proper by this circumstance also, that if Congress, approving the proposition, shall yet think it more eligible to found it on a donation of lands, they have it now in their power to endow it with those which will be among the earliest to produce the necessary income."[10]

In his second annual message (December 5, 1810), President Madison wrote to Congress, "I cannot presume it to be un-

[7] For a wealth of literature on this topic see "Memorial in Regard to a National University," 1891, J. W. Hoyt; and "University of the United States," 54 C., 1 S., *Sen. Rep.*, 429.

[8] Given in full by Hoyt, *National University*, 42, 43.

[9] *Annals Congress*, 9 C., 1 S., 301.

[10] Richardson, I, 410.

seasonable to invite your attention to the advantages of superadding to the means of education provided by the several States, a seminary of learing instituted by the national legislature within the limits of their exclusive jurisdiction [District of Columbia], the expense of which might be defrayed or re-imbursed out of vacant grounds which have accrued to the nation within those limits."[11] The House committee, to whom this portion of the President's message was referred, reported, that the Constitution does not warrant the incorporation of such an institution by any express provision; but since Congress has exclusive jurisdiction over the District of Columbia, it cannot be doubted that Congress has the requisite power to legislate in the present case; however, serious doubts arise as to the right to appropriate public property for the support of such an institution. The practical conclusion of this report was to the effect that the erection of a university along the lines proposed was not within the powers of Congress confided by the Constitution, wherefore it was recommended that no measures be taken.[12] President Madison recurs to the same subject in his seventh annual message of December 5, 1815, writing that "the present is a favorable season also for bringing again into view the establishment of a national seminary of learning within the District of Columbia, and with means drawn from the property therein, subject to the authority of the general government."[13] In his eighth annual message (December 3, 1816), President Madison renews his previous recommendation for the establishment of a national university to the favorable consideration of Congress.[14] The House committee, to whom the latter message was referred, concluded their report with the words, "under a conviction, therefore, that the means are ample, the end desirable, the object fairly within the legislative powers of Congress, and the time a favorable one, your committee recommend the establishment of a national university"; and a

[11] Richardson, I, 485.

[12] *Annals Congress*, 11 C., 3 S., 976.

[13] Richardson, I, 568.

[14] *Ibid.*, 576.

bill and estimate for that purpose were submitted by the chairman, Mr. Wilde (Ga.).[15] Later in the session the consideration of the bill was indefinitely postponed. While this bill was on the calendar, a resolution for an amendment to the Constitution, "That Congress shall have power to establish a national university," was presented, but by a vote of 86 to 54, it was decided not to consider it.[16]

President Monroe, in his first annual message (December 2, 1817), suggested that it be recommended to the States to include in an amendment to the Constitution "a right in Congress to institute likewise seminaries of learning, for the all-important purpose of diffusing knowledge among our fellow-citizens throughout the United States."[17] Two years later, December 23, 1819, Mr. Hill (Mass.) introduced a resolution in the House, that a committee be appointed to inquire into the expediency of establishing a national university within the District of Columbia.[18] This resolution was not adopted. This same subject formed a considerable part of President J. Q. Adams's first annual message[19] (December 6, 1825); and a Senate committee was appointed to report upon the expediency of establishing such an institution.[20]

A partial revival of this question in 1836 is to be found among the debates relative to the disposal of the James Smithson legacy. While various committee reports were concerned with the question of the propriety and expediency of establishing at Washington, under the name of "The Smithsonian Institution," for the increase and diffusion of knowledge among men, an institution on the basis of the Smithson endowment, various members of either branch of Congress thought that they foresaw in these reports plans for establishing a national university, and were, therefore, opposed to such an institution either on principle or on prejudice.[21]

[15] *Annals Congress*, 14 C., 2 S., 234, 257, 1064. [16] *Ibid.*, 268.

[17] Richardson, II, 18. [18] *Annals Congress*, 16 C., 1 S., 781.

[19] Richardson, II, 311. [20] Debates, 19 C., 1 S., 23.

[21] See Rhees, "The Smithsonian Institution," etc., 1879, 135–158; also, Debates, 24 C., 1 S., 63, 1374.

For over thirty years the congressional records are silent concerning any legislation relative to the establishment of a national university at the seat of the General Government. From 1867 up to the present time Congress has been concerned with various species of legislation seeking to establish Government endowment and control of various sorts of higher institutions.

On February 22, 1867, a resolution was agreed to, directing the Committee on Ways and Means to inquire into the expediency of bringing in a bill to establish a National School of Science.[22] During the following Congress, Mr. Stewart (Nev.) introduced a bill to establish a National School of Mines.[23] Similar legislation is recorded to have occurred during the years immediately following. Not until 1872, however, was Congress again concerned with the question of establishing a national university. In this year both Mr. Howe (Wis.) and Mr. Sawyer (S. C.) introduced bills in the Senate, providing for the establishment of such an institution,[24] while a similar bill was introduced in the House by Mr. Perce (Miss.).[25] The House Committee on Education and Labor favorably reported a bill, the endowment feature of which provided that the General Government should bind itself to pay such "national university in perpetuity 5 per cent. interest on a registered unassignable certificate of $20,000,000."[26]

President Grant in his message of December 1, 1873, suggested to Congress the propriety of establishing, in the District of Columbia, "an institution of learning or university of the highest class, by donation of lands."[27] A bill was, accordingly, introduced in the Senate by Mr. Pratt (Ind.);[28] but no further action appears to have been taken.

The annual message of President Hayes of December 3,

[22] Globe, 39 C., 2 S., 1478. [23] Globe, 40 C., 2 S., 10, 553, 554, 556.

[24] Globe, 42 C., 2 S., 1938, 3637. [25] *Ibid.*, 198.

[26] Hoyt, *National University*, 70.

[27] *Ibid.*, 73. [28] Record, 43 C., 1 S., 77.

1877, treats of this subject partly as follows: "I here add that I believe it desirable, not so much with reference to the local wants of the District [of Columbia], but to the great and lasting benefit of the entire country, that this system should be crowned with a university."[29] A bill to this effect was introduced in the House during the same session.[30]

Similar measures have been introduced in Congress during the last twenty years, none of which have, as yet, met with any measure of success. Senator Ingalls (Kansas) introduced a national university measure in 1885.[31] During each succeeding Congress, and including the 55th Congress, this project has received more or less, usually less, attention in either house. Its advocates believe such legislation by Congress to be constitutional, expedient, and necessary. They point to the many scientific bureaus already in existence, for the organization of which there can be found no expressed constitutional warrant, but for the establishment of which Congress was believed to possess ample implied powers, the resultant powers accruing from expressed powers. It is but a step, they say, to the co-ordination of these scientific agencies of the Government into an administrative whole which will constitute a true university; and this step would be but a resultant of the expressed powers already possessed by Congress. Furthermore, this step is expedient and necessary in our present stage of civilization and culture. On the other hand, the opponents of the national university idea deny these contentions in toto, regarding national legislation concerning this measure to be unconstitutional, inexpedient and unnecessary.

[29] *Ibid.*, 45 C., 2 S., 7. [30] *Ibid.*, 3835. [31] *Ibid.*, 49 C., 1 S., 402.

CHAPTER III

THE LANDLESS STATES STRIVE FOR RECOGNITION

At various periods in our history the sixteen States of the Union (comprising the original thirteen, and Vermont, Kentucky and Maine), which contained no public lands within their borders, and which, therefore, received no government endowment for education such as has been granted to the States formed out of the public domain, have striven to secure what they have deemed a just and equitable distribution of either public lands or the proceeds of the sales of such lands, for educational purposes. This movement is apparently an offshoot of the old States'-rights conflict over the public lands which kept the old Congress under the Confederation in such a turmoil during the early days of national beginnings. The debates of both advocates of and opponents to measures of equitable distribution of the public lands for education, concentrate about the intent and purport of the deeds of cession of the original land-owning States; much weight is also placed upon the varying notions regarding the constitutionality of such a distribution; and, finally the legislative mind has never lost sight of the conditions of justice, expediency, and necessity entering into the problem. Finding its first recorded expression in a congressional debate in 1803, this measure has appeared more or less frequently in Congress during every decade to the present. Furthermore, the movement functions as a constituent factor, in company with other powerful conditions, in bringing to pass the Surplus Revenue Distribution of 1836, and the Distribution Act of 1841. Nor can the feeling for just and equitable participation in the benefits of Government

grants for education, on the part of the landless States, be divorced from the strong agricultural movement of the West, and the American sentiment favoring practical education characteristic of the '50's, in estimating the force at work in bringing to pass the Agricultural and Mechanical College Act of 1862, and its subsidiary acts of 1887 and 1890.

It is recorded that in the debate on the bill to grant to the State of Ohio one-thirty-sixth of the public land within her borders for educational purposes, Mr. Gregg (Penn.) entered objections against such a grant (Feb. 22, 1803).[1] He considered the public lands of the United States a common property in which every citizen was equally interested, and in which all citizens had an equal right. He quoted the Virginia act of cession to sustain his view. Furthermore, he observed, the Indian title had been extinguished by money taken out of the Treasury of the United States, to which every citizen had contributed. What right, then, can Congress possess to favor a special community to the prejudice of other communities equally entitled to a similar consideration? Mr. Randolph (Vir.), on the other hand, considered the grant compatible with the common benefit. He believed that while the appropriation would protect the interests of learning, it would also enhance the value of property. Can we suppose that emigration will not be promoted by it? he asked; and that the value of land will not be enhanced by the emigrant obtaining the fullest education for his children? And is it not better to obtain $2 an acre with an appropriation for schools, than 75 cents an acre without such appropriation?

It will be observed that the same economic ideas governing the framing of the ordinance of 1785 were in 1803 clearly enunciated and emphasized. Fourteen years later (Feb. 8, 1817) the House refused to consider a resolution providing that out of any surplus in the Treasury, $1,000,000 be distrib-

[1] *Annals Congress*, 7 C., 2 S., 584.

uted by Congress among the States, Territories and the District of Columbia, for the promotion of education and the advancement of religion and morality.[2] On December 7, 1818, the House Committee on Public Lands was instructed to inquire into the expediency of granting a tract of land not exceeding 100,000 acres, to each State for the endowment of a university therein.[3] The committee rendered an unfavorable report, basing their conclusions on the following grounds: That no State had yet memorialized Congress for such assistance; that even if such were not the case, yet large grants of land to corporate bodies would have a tendency to retard settlement in the western States; that such grants, by throwing large quantities of land upon the market, would lessen the value of the lands offered for sale by the United States; that, finally, grants should preferably be in money.[4] Two years later (February 28, 1820), a resolution to inquire into the expediency of making appropriations of land for the support of literary institutions in the old States, was referred to the Senate Committee on Public Lands.[5] On the preceding January 7th, a House resolution revived the resolution of December, 1818; but the committee to whom the resolution was referred reported such a distribution to be inexpedient.[6]

A Senate resolution of January 10, 1821, instructed the committee on Public Lands to report on the justice and expediency of granting land for the purposes of education within the old States, corresponding to the appropriations which had been made for educational purposes within the new States.[7] The committee considered a grant of lands as contemplated by the resolution to be inexpedient, that the lands "granted to some of the new States for the purposes of education, though distinguished in common parlance by the name of *donations*, were,

[2] *Annals Congress*, 14 C., 2 S., 933.
[3] *Ibid.*, 15 C., 2 S., 246.
[4] *Amer. State Papers, Pub. Lands*, III, 410.
[5] *Annals Congress*, 16 C., 1 S., 459.
[6] *Ibid.*, 896.
[7] *Annals Congress*, 16 C., 2 S., 151.

in fact, sales bottomed upon valuable considerations, in which the new States surrendered[8] their *right* of sovereignty over the remaining public lands, and gave up the whole amount which might have been received in taxes before such lands were sold and for five years thereafter."[9]

During this year various of the old States, led by Maryland, and including New Hampshire, Rhode Island, Connecticut, New Jersey, Kentucky, Delaware, Maine and Vermont, memoralized Congress for grants of land for educational purposes.[10] The substance of the resolutions thus presented to Congress was to the effect that "each of the United States has an equal right to participate in the benefit of the public lands as the common property of the Union, and that the States in whose favor Congress had not made appropriations of land for the purpose of education, are entitled to such appropriations as will correspond, in a just proportion, with those heretofore made in favor of the other States." The reports accompanying these resolutions held, in substance, that the public lands had been acquired by conquest, by purchase, and by cession, for the common benefit; that such acquisition had been by means of common effort and of common treasure; that being common property, all States were entitled to a proportionate participation in such lands. Furthermore, the new States could not justly hold that their school lands were really sales bottomed upon valuable consideration; for, as Congress possessed absolute dominion over the whole territory before the creation of the new States, how could these new States have relinquished any right of sovereignty which they had never possessed?[11] These

[8] Among the conditions of admission imposed upon new States by the General Government, was the provision that all public lands belonging to the United States were to remain exempt from State taxation while the property of the United States, and for five years after sale.

[9] *Amer. State Papers, Pub. Lands*, III, 509.

[10] *Amer. State Papers, Pub. Lands*, III, 499–514.

[11] *Amer. State Papers, Pub. Lands*, III, 509.

various State memorials were referred to committees, and were apparently suppressed.[12]

The nature of congressional legislation now begins to be affected by the contagion of the internal improvement epidemic. Education and internal improvement become closely associated in the minds of legislators. Accordingly, it is recorded that on December 22, 1824, Senator Johnston (La.), submitted a resolution appropriating the public lands as a permanent and perpetual fund for purposes of education and internal improvement. The proceeds were to be invested as Congress might direct, and the interest arising was to be distributed among the several States according to their ratio of representation, each half to constitute a State fund for purposes of education and internal improvement respectively.[13] About a year later (January 30, 1826) Senator Dickerson, remarking the rapidly approaching extinguishment of the public debt, and the prospect of a cumbersome surplus, presented a resolution to the effect that provision be made for the annual distribution of $3,000,000 among the States and Territories in proportion to their rate of direct taxation, for purposes of education and internal improvement.[14]

On February 24, 1826, the House Committee on Public Lands, in an elaborate report, passed favorably on a resolution of the preceding December, instructing them "to inquire into the expediency of appropriating a portion of the net annual proceeds of the sales and entries of the public lands exclusively for the support of common schools, and of apportioning the same among the several States in proportion to the representation of each in the House of Representatives."[15] But nothing came out of the matter.

A resolution offered in the House by Mr. Richardson

[12] *Annals, Congress*, 17 C., 1 S., 537, 701, 709.

[13] Debates, Dec. 22, 1824, p. 42.

[14] Debates, Vol. II, Pt. I, 77.

[15] *Amer. State Papers, Pub. Lands*, IV., 750.

(Mass.), on December 16, 1829, for the addition to the standing committees of a committee on education, proved to be a veritable legislative hornets'-nest.[16] Mr. Hale (N. C.), for instance, maintained that the subject of education was one which did not properly come within the control of Congress. If we go on assuming authority over subjects entirely foreign to our sphere of authority, where are we to end? he asked; shall we not effectually assume all the power of the State authorities? The powers of this Government, though limited, are plenary within their proper sphere. If this be so, it is decisive, he continued, that this Government cannot legislate concerning education, because its power being plenary is necessarily exclusive, and therefore not to be participated. The resolution was laid on the table by a vote of 156 to 52.

During the following years the educational and internal improvement measures reappear, and while applying equally to the new States, still the old States are a powerful force in urging legislation. The prospects of a surplus in the National Treasury, and the fear of allowing so much money within easy reach of those in power, were urgent impelling motives in causing men to seek to discover a means whereby to reduce the surplus and to remove the temptation.

Resolutions, petitions and memorials concerning the manner of disposing of the accumulating surplus were presented in Congress in great number. Senator Henry Clay's bill (1834) appropriating for a limited time certain proceeds of the sales of the public lands to the several States for purposes of internal improvement or education, which passed both branches of Congress, was vetoed by President Jackson on the main contention that "Congress possesses no constitutional power to appropriate any part of the moneys of the United States for objects of a local character within the State."[17]

About two years later (June 23, 1846) Congress passed the famous Surplus Revenue Distribution Act, entitled "An act

[16] Debates, 21 C., 1 S., 475.

[17] Richardson, III, 56 ff.

to regulate the deposit of the public moneys."[18] In conformity with the intent of the various petitions, memorials, and resolutions of previous years, most of the twenty-seven States with which the moneys were deposited awarded the whole or a part of their share of the distribution to their respective State school funds. During the following four years attempts were made to secure a distribution of the proceeds of the public land sales, either among all the States, or among the sixteen landless States, for educational and other purposes. Senator Clay's land bill reappears at various times. Again the debates gravitate about questions of expediency, of justice to the old States, of constitutionality, of centralizing tendencies in the General Government, of violation of compacts with the new States. But finally a fortunate composition of both branches of Congress favors the passage of the Distribution Act of 1841,[19] by a vote of 28 to 23 in the Senate, and a vote of 116 to 108 in the House. The educational clause of the early drafts of this act had been eliminated in the course of debate. But while this act made no specific reference to education, yet many of the States benefited by it appropriated varying portions of their shares to educational purposes.

During these years and the years following, the agricultural movement appears on the scene and gains strength. As early as 1840 Congress received a petition from the Kentucky State Agricultural Society praying that the funds of the Smithsonian legacy be used in the endowment of an agricultural college.[20] In 1848 Senator Johnson (Md.) presented a petition from a citizen of New York praying that Congress appropriate certain moneys to be applied by the State Governments to the establishment of institutions of science and agriculture.[21] In December of the same year notice was given in the House of a bill to grant public lands to the various States for the en-

[18] 5 S., c. 115, p. 52.

[19] 5 S., c. 16, p. 453.

[20] Globe, 26 C., 1 S., 187.

[21] *Ibid.*, 30 C., 1 S., 617.

couragement and improvement of agriculture in such States.[22] Thereafter petitions from corporate bodies and States were presented in Congress requesting national aid for agricultural institutions in the various States. On February 28, 1856, Mr. Justin Morrill (Ver.) offered a resolution to the effect "that the Committee on Agriculture be requested to inquire into the expediency of establishing one or more national agricultural schools upon the basis of the naval and military schools."[23] On December 14, 1857, Mr. Morrill introduced a bill donating public lands to the several States which might provide colleges for the benefit of agriculture and the mechanic arts, on the basis of 20,000 acres for each senator and representative to which each State was entitled.[24] Passing the House by a vote of 105 to 100, it was defeated in the Senate by a vote of 29 to 26. It is of passing interest, perhaps, to note that Senator Clay (Alabama) in the course of debate declared, "It is a bill which the Democratic party of this country has been committed against for thirty years past."

This bill was again taken up during the following session, and furnished the occasion for vigorous debate. Senator Pugh (Ohio) considered the measure wholly unconstitutional. He held that Congress possessed no power over the mental and moral culture of a people; that none of these objects of local concern were by the Constitution expressly or impliedly prohibited to the States; that none of these were, by any express language of the Constitution, transferred to the United States; and that, therefore, none of these functions of local administration and legislation were vested in the Federal Government even by implication.[25] Senator Mason (Vir.) feared that the bill intended to use the public lands as a means of controlling the policy of the State legislatures; that if agricultural colleges could be established, then might State school systems also be established by the Federal Government, thus

[22] Globe, 30 C., 2 S., 56. [23] *Ibid.*, 34 C., 1 S., 530.

[24] *Ibid.*,, 35 C., 1 S., 32, 36, 1609, 1692 ff. [25] *Ibid.*, 35 C., 2 S., 713.

fastening upon the Southern States the peculiar free school systems of New England.[26] The advocates of the measure, of course, denied the validity of all opposing arguments based on unconstitutionality, inexpediency, injustice to the new States, and undue centralization of Federal power. The bill passed the Senate by a vote of 25 to 22, and several slight Senate amendments were agreed to by the House. President Buchanan, however, vetoed the measure.[27] His objections were practically those advanced by the opposition during the debate. An attempt to pass the bill over the President's veto failed.

The legislative changes incident to the Civil War removed a large portion of the opponents of the agricultural college measure from the halls of Congress. Hence, when the bill was again introduced in 1862,[28] practically no opposition was encountered. Both the administration and Congress were favorable to the measure. The most important change introduced into the original measure was an increase in the endowment from 20,000 acres to 30,000 acres for each senator and representative. This measure, entitled, "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved by President Lincoln, July 2, 1862, *represents the first grant of public lands to the old States for educational purposes.*[29]

With the changed economic and social conditions of the South after the close of the Civil War, there accompanied a shifting of the point of view relative to the power of Congress to grant aid to the various States for educational purposes. The list of bills, memorials, petitions and resolutions presented to Congress for the furtherance of these objects is a long one.

[26] Globe, 35 C., 2 S., 718.

[27] *Ibid.*, 35 C., 2 S., 1412. [28] *Ibid.*, 37 C., 2 S., 1935, 2769.

[29] The grants of a township each to the Connecticut and the Kentucky Deaf and Dumb Asylums were for the benefit of private, not State, institutions.

Nor has the endeavor on the part of the old States to be the recipients of an equitable distribution of the public lands for educational purposes been lessened. Such measures have been the source of warm debate. The arguments employed do not differ essentially from those used in the early debates. But to the present time the old States have not received any grants for elementary and higher education commensurate with the aid rendered the public land States. Twice, however, since the passage of tne Agricultural College Act of 1862 have the old States participated equitably in the patronage of the General Government, viz.: in the Agricultural Experiment Station Act of 1887, and in the Morrill Act of 1890 for the further endowment of the various State agricultural colleges.

CHAPTER IV

NATIONAL AID TO EDUCATION

Reservation of the Sixteenth Section for School Purposes

In a preceding chapter the genesis of the reservation of the sixteenth sections, or lands equivalent thereto, in the various townships, for school purposes, has been traced. The policy foreshadowed in the early acts of Congress was definitely established in the Ohio enabling act, and, with variations and additions, it has become a recognized function of the General Government to make grants of the public lands for common school purposes to all new public land states on their admission into the Union. For many years the usual form of the enabling act provided, " That section numbered sixteen, in every township, and, when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State, for the use of the inhabitants of such township, for the use of schools."[1] With the exception of Tennessee, the enabling acts and acts supplementary thereto relating to the States admitted between 1803 and 1837, specifically provided that the lands granted to any township for the use of schools were to constitute a source of revenue exclusively for such township. For reasons discussed in a later chapter, the grant of school lands to Tennessee was couched in more general terms, to the effect that " the State of Tennessee shall, moreover, in issuing grants and perfecting titles, locate 640 acres to every 6 miles square, in the territory hereby ceded, where existing claims will allow the same, which

[1] Illinois Enabling Act.

shall be appropriated for the use of schools for the instruction of children forever." Another form of grant frequently employed provided that "the section numbered sixteen, in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools."[2]

It was early held that this method of restricting the application of the proceeds of a school section to the support of the schools within the township was a source of injustice and of hardship. Thus, in many cases, the school lands of townships in certain portions of a State were, owing to the nature of the soil and the region, absolutely worthless, producing not a cent of income, while more fortunate townships were favored with income-producing school lands. This inequality in the distribution of congressional bounties was the cause of numerous State petitions to Congress, praying for lieu school lands or for permission to consolidate the many township funds into a simple State fund to be constituted on the basis of a pro rata distribution. In order to remedy this inequality and to secure a proportionate enjoyment of the Government common school grant by all townships, the Michigan constitutional convention of 1835 submitted to Congress the proposition that the school sections be vested in the State to form a State fund. This proposition was favorably received by Congress; and the act supplementary to the Michigan act of admission contained the provision that the sixteenth sections or other school lands "shall be granted to the State for the use of schools."[3] Since 1836 the General Government has thus granted the common school lands to the States, as the nuclei of State school funds,

[2] Indiana Enabling Act.

[3] 5 S., c. 121, s. 1, p. 59. All references to the *United States Statutes at Large*, occurring in this paper, will be designated in the preceding manner, and are to be interpreted, for example, as 5th volume of the United States Statutes at Large, chapter 121, section 1, page 59.

a policy which has made possible an equitable participation in the benefits of the common school lands by all the townships in the States admitted since that date.

Reservation of the Thirty-Sixth Section for School Purposes

When the bill to admit Wisconsin was under debate in the House, Mr. Rockwell of Connecticut offered a resolution to grant Wisconsin the thirty-sixth section in every township, in addition to the usual grant of the sixteenth section, for the use of the common schools of the State.[4] This proposed amendment was, however, declared by the House to be irrelevant (May 10, 1848). A few months later, while the act to establish the territorial government of Oregon was under discussion, Senator Stephen A. Douglas was instrumental in securing the grant of an additional section, the thirty-sixth in each township, for school purposes. The act as passed provided that "Sections numbered sixteen and thirty-six in each township in the said Territory shall be, and the same are hereby, reserved for the purposes of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same"[5] (August 14, 1848). This policy of granting the thirty-sixth section, in addition to the sixteenth section, for school purposes, has been observed in the organization of new Territories and in the admission of new States since the Oregon act of 1848. A departure from this general rule of procedure occurs in the Utah enabling act. It was shown, during the discussion of the measure in Congress, that the lands in Utah were in general of a poorer quality than were to be found in other western States; that the revenues arising from a grant of the sixteenth and thirty-sixth sections would be wholly inadequate for educational purposes; and that, therefore, additional school lands ought to be granted. Accordingly, the State was

[4] Globe, 30 C., 1 S., 748.

[5] 9 S., c. 177, s. 20, p. 330.

granted the second, the sixteenth, the thirty-second, and the thirty-sixth sections in every township for school purposes.[6]

Other Grants of Land for Common Schools

In order to provide for the support of schools in all townships or fractional townships for which no land had been appropriated for that purpose, the fractional township act of May 20, 1826, indicated the quantities of land to which fractional townships of varying sizes should be entitled.[7] This act is general in character, applying equally to all public land States. Numerous special acts, relating to particular sections or to particular States, have been passed, all of which will be considered in the chapters dealing with the individual States.

Land Grants for State Universities

The act of July 23, 1787, delegating "Powers to the Board of Treasury to contract for the sale of Western Territory," provided, "That not more than two complete townships be given perpetually for the purpose of an university, . . . to be applied to intended object by the legislature of the State."[8] The policy of providing for higher education thus inaugurated has become an established condition attaching to the admission of every public land State into the Union. Such grants have, moreover, been invariably vested in the legislatures of the States solely for the use of the seminaries or universities. But all grants have not been of equal extent. Of the twenty-seven public land States, nineteen received each two townships of land for university purposes; while of the remaining eight, Alabama, Florida, Wisconsin, and Minnesota each received four townships, Mississippi and Ohio three townships apiece, Tennessee 100,000 acres, and Utah 200,000 acres, for State universities.

[6] 28 S., c. 138, s. 6, p. 109.

[7] 4 S., c. 83, p. 179.

[8] *Pub. Lands, Laws*, c. 21.

The Grant of a Percentage of the Land Sales

Among the usual propositions submitted to new States by Congress, has occurred the stipulation that a certain percentage of the net proceeds of the sales of public lands lying within such States shall be reserved for certain specified purposes. The purposes specified have usually been various forms of internal improvements, such as, making roads, building canals, etc.; while the amounts granted have consisted of five per cent of the net proceeds of the public lands sold within the State. The first departure from this rule is to be found in the Illinois enabling act, (April 18, 1818) wherein Congress provides that three per cent of such sales shall "be appropriated by the Legislature of the State for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university."[9] In all the other States admitted previous to 1845, the five per cent proceeds were designated for internal improvement purposes. But in the latter year the Florida supplementary admission act reserved such proceeds for purposes of education within the State.[10] Thereafter it became quite the established custom to devote such proceeds, with congressional consent, to educational purposes. In fact, out of seventeen public land States admitted since 1845, fourteen have thus disposed of their five per centum of land sales, while similar disposition of a whole or a part of the proceeds has been made by sixteen[11] out of the twenty-five public land States admitted since 1803. Congress has directly appropriated the five per cent proceeds for education in the enabling acts of the States admitted since 1889, stipulating that such proceeds shall form a permanent fund, the interest only of which is to be used for the support of common schools.

[9] 3 S., c. 67, p. 430.

[10] 5 S., c. 75, p. 788.

[11] Florida, Idaho, Illinois, Iowa, Kansas, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming.

The Saline Lands Grant

The Congressional act[12] of May 18, 1796, providing for the sale of the public lands northwest of the Ohio river, reserved for future disposal by the United States of every salt spring which might be discovered, together with the section of one mile square which included it. The Ohio enabling act[13] of six years later contained the proviso that certain salt springs with lands including the same, making a total of slightly over thirty-six sections, should be granted "to the said State for the use of the people thereof, the same to be used under such terms, conditions, and regulations as the Legislature of the said State shall direct;" but the Legislature was restricted to leasing the the land. In 1824 Congress authorized such land to be sold, and directed the proceeds to be applied to such literary purposes as the Legislature might think best.[14] Saline lands have been also granted to thirteen States, usually under similar provisions, of which eleven[15] have devoted the grant to purposes of education.

The Agricultural and Mechanical College Land Grant of 1862

The history of the origin of this Government endowment was outlined in a previous chapter;[16] and it was there indicated that this is the first grant in which all the States, both public

[12] 1 S., c. 29, s. 3, p. 464.

[13] 2 S., c. 40, p. 175. [14] 4 S., c. 3, p. 79.

[15] Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin. Wisconsin is usually omitted from tabular statements concerning saline lands grants. But the writer considers it more logical to retain Wisconsin in such statements for the following reasons: Wisconsin was granted seventy-two sections of salinelands; but as lands of this character were not found, the General Government granted a similar quantity of other lands as indemnity. As will be observed, the grant of the indemnity sections was practically conditioned by the previous grant of saline lands. With the exception of Ohio and Indiana, which received about one section each, and of Illinois which received 121,029 acres, the other States each received two sections of saline lands.

[16] Chapter III.

land and landless, received a proportionate share of the distribution for educational purposes. The main provisions of this act,[17] entitled, "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," are as follows:

Sec. 1. Each State is to receive an amount of land in quantity equal to 30,000 acres for each Senator and Representative to which such State is entitled by apportionment under the census of 1860.

Sec. 2. States containing public lands subject to sale at private entry at $1.25 per acre, shall select their quota from such lands within their limits. Other States shall be entitled to land "scrip" to the amount of their distributive shares.

Sec. 3. All expenses incident to the sale and management of these lands shall be paid by the respective States, so that the proceeds may be applied to the specified purpose without any diminution.

Sec. 4. All moneys derived from the grant shall be invested in stocks of the United States, of the States, or other safe stocks paying not less than five per cent. The interest shall be inviolably appropriated by each State "to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

Sec. 5. Each State shall replace so much of its fund as may be diminished or lost, so that the capital of the fund shall forever remain undiminished; but a sum not exceeding ten per centum of the amount received by any State may be expended for the purchase of lands for sites or experimental farms.

[17] 12 S., c. 130, p. 503; July 2, 1862.

Each college shall send an annual report concerning its progress to all the other similar colleges and to the Secretary of the Interior.

Sections 6, 7, and 8 are of minor interest.

About twenty-five other acts of varying degrees of importance, subsidiary to the act of 1862, and either of local or of general application, have been passed by Congress. An act of March 3, 1883, however, is worth singling out. This act amended the fourth section of the act of 1862 so as to authorize the States having no State stocks, to invest the agricultural college funds "in any other manner after the Legislatures of such States shall have assented thereto, and engaged that such funds shall yield not less than five per cent. upon the amount so invested."[18]

The act of 1862 has been extended to States admitted since that time on the basis of the number of Senators and Representatives to which such States were entitled on admission. Accordingly, at the present time every State in the Union contains an institution for higher education founded on this Government endowment.

The Agricultural Experiment Station Act of 1887

The object of this law[19] is stated in the first section to be "to aid in acquiring and diffusing among the people of the United States useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science." The law accordingly authorizes agricultural experiment stations to be established under the direction of the agricultural colleges founded on the endowment of the act of 1862.

Sec. 2. The scope and general nature of the researches and experiments to be undertaken by the stations, are outlined.

[18] 22 S., c. 102, p. 484. [19] 24 S., c. 314, p. 440. March 2, 1887.

Sec. 3. The United States Commissioner of Agriculture is to render such advice and assistance as will best promote the purposes of the act. Furthermore, each station is to send a detailed report of its operations to every other station, to the Commissioner of Agriculture, and to the Secretary of the Treasury of the United States.

Sec. 5. For the purpose of defraying the expenses of the experiment stations, the sum of $15,000 per annum is appropriated to each State and to each Territory entitled thereto, to be specially provided for by Congress in the appropriations from year to year, out of any money in the Treasury proceeding from the sales of public lands. Out of the first annual appropriation, one-fifth may be expended for building purposes, and thereafter an amount not exceeding five per centum of the annual appropriations may be so expended.

Sec. 6. However, the amount of money appropriated to any station shall not exceed the amount actually and necessarily required for its maintenance and support.

Sec. 10. This act shall not be construed as binding the United States to continue the payments herein provided for; but Congress may at any time suspend, amend, or repeal any or all the provisions of this act.

The forty-five States, and the Territories of Arizona, New Mexico, and Oklahoma, have established agricultural experiment stations deriving their support in whole or in part from this Government Endowment. During 1894, for example, the total income of the Stations was $996,157, of which $719,830 was received from the National Government.[20]

The Agricultural and Mechanical College Endowment of 1890

As early as the second session of the forty-second Congress (1871–72), Senator Morrill, of Vermont, the father of the act of 1862, introduced a bill (Senate bill 693) to provide for the

[20] Year-Book, U. S. Dept. Agric. 1894, 113.

further endowment and support of colleges for the benefit of agriculture and the mechanic arts.[21] During the years succeeding, similar measures frequently appear; but it was not until 1890 that Senator Morrill succeeded in having passed "An act[22] to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of an act of Congress approved July 2, 1862."

Sec. 1 provides that the sum of $15,000 shall be paid for the year ending June 30, 1890; that the sum so paid shall be annually increased by an additional sum of $1,000 for each succeeding year during a period of ten years, and that "the annual amount to be paid thereafter to each State and Territory shall be $25,000, to be applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural, and economic science, with special reference to their applications in the industries of life." Furthermore, no money shall be paid any State or Territory in which race distinctions are drawn in the admission of students to such colleges; but separate institutions for the races may be provided by the States or Territories, and in certain cases a just and equitable division of the moneys received under this act may be made between the institution for white students and the institution for colored students.

Sec. 2. The Treasurers of the institutions entitled to receive these moneys are required to report to the Secretary of Agriculture and to the Secretary of the Interior, on or before September 1st, of each year, a detailed statement of the amount so received and of its disbursement.

Sec. 3. Any portion of the moneys received by any State or Territory for institutions for colored students, which may

[21] Globe, 42 C., 2 S., 1177.

[22] 26 S., c. 841, p. 417.

be diminished, lost, or misapplied, shall be replaced by such State or Territory, and until so replaced, no subsequent appropriation shall be granted such State or Territory. No portion of the moneys shall be used for building purposes. An annual report by the president of each of the beneficiary institutions regarding the condition and progress of each such institution shall be transmitted to the Secretary of Agriculture and to the Secretary of the Interior.

Sec. 4. On or before July 1st of each year, the Secretary of the Interior shall certify to the Secretary of the Treasury what colleges are entitled to recive their share of the annual appropriations, and the amounts to which each is entitled. If the share of any State or Territory should be withheld, such State or Territory has the right of appeal to Congress.

Sec. 5. The Secretary of the Interior shall annually report to Congress the disbursements which have been made in all the States and Territories.

Sec. 6. Congress reserves the right to amend, suspend, or repeal any or all of the provisions of this act.

Sixty-four institutions[23] for higher education are to be found in the forty-five States, and in the Territories of Arizona, New Mexico, and Oklahoma, partially supported by the funds accruing from this Endowment. Fourteen of these institutions exist exclusively for the education of the colored race.

The Surplus Revenue Distribution Act of 1836

In a preceding chapter there have been outlined the events of the decade preceding 1836, leading to the distribution of the surplus revenue by virtue of an act to regulate the deposit of the public moneys, approved June 23, 1836.[24] The surplus in the United States Treasury thus disposed of had been, in the main, derived from public land sales. And in order to provide for an equitable distribution of the moneys among the States

[23] Rep. U. S. Com. Education, 1896–'97, 1766–1771.

[24] 5 S., c. 115, p. 52.

for safe-keeping, section thirteen of the act provided that the moneys, reserving $5,000,000, which should be in the Treasury of the United States on January 1, 1837, should be deposited with the several States in amounts proportionate to their respective representation in the Senate and House of Representatives; and that such States should pledge their willingness to repay their distributive share to the United States when called for. Section fourteen provided for the payment of the deposits to the States in four quarterly installments, beginning January 1, 1837.

Later in the year the provisions of this act were extended to Michigan, recently admitted, so that during the following year twenty-six States became the depositories. The panic of 1837 prevented the payment of the fourth installment; but the three installments distributed among the States the sum of $28,101,644.97. The fourth installment has never been paid, nor has the General Government attempted to recall the deposits, and probably never will. The interesting thing about this whole matter is, that twenty-one States[25] devoted varying amounts of their distributive shares to educational purposes, thus carrying to its logical completion the moving spirit of earlier legislation concerning the disposition of the surplus.

The Distribution Act of 1841

Here again we come in contact with a measure which in its incipient and tentative forms was closely identified with educational purposes. Persistently introduced by Senator Henry Clay, vetoed by President Jackson, re-introduced and variously changed as to form and content in its struggle for existence, the "Act[26] to appropriate the proceeds of the public lands,

[25] Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Tennessee, Vermont. Bourne, Surplus Revenue, 122, 123.

[26] 5 S., c. 16, p. 453.

etc," finally secured executive approval, September 4, 1841. The main provisions of this act relating to the present investigation are as follows:

Sec. 1. From and after December 31, 1841, there shall be allowed and paid to the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas and Michigan, in addition to the five per centum of public land sales granted on admission, the sum of ten per cent. of the net proceeds of the sales of public lands within their borders made after December 31, 1841.

Sec. 2. After deducting the per centum allowed on admission and the ten per cent. proceeds, as enumerated in section one, the residue of the net proceeds of the public land sales shall be divided umong the twenty-six States of the Union, the District of Columbia, and the Territories of Wisconsin, Iowa and Florida, according to their respective federal representative population, to be disposed of under the direction of the respective Legislatures for such purposes as the Legislatures may direct; provided that the share received by the District of Columbia shall be applied to purposes of education.

Sec. 5. This act is to remain in force until otherwise provided for by Congress.

Sec. 8. Each State enumerated in section one shall be entitled to a total amount of 500,000 acres for purposes of internal improvement, which amount shall be inclusive of the amounts hitherto received by said States for such purposes. This grant shall attach to each new State admitted, and under the same conditions.

The first four sections of this act remained in force until June 13, 1848, when Congress declared the provisions of those sections suspended.[27] From the evidence at hand it seems safe to conclude that only the net proceeds of the sales of public lands sold prior to August 29, 1842, were distributed among the States in accordance with the provisions of the act

[27] 9 S., c. 61, p. 237.

of 1841.[28] The sum total of the distributive shares amounted to $691,117.05, a portion of which was devoted by some of the States to educational purposes.[29]

The eighth section of this act is of especial interest, since out or the seventeen States which received the grant for internal improvement purposes, twelve[30] devoted the whole or a part of such grant for purposes of education within the State, usually with the expressed consent of Congress. The policy outlined in the eighth section was invariably followed by Congress on the admission of new States until 1889. The seven western States admitted since 1889 have received, in lieu of internal improvement, saline, and swamp lands, other lands which Congress has granted solely for educational, charitable, or reformatory institutions.[31]

Swamp and Overflowed Lands: Act of 1850

As early as 1826 unsuccessful attempts were made to secure a grant by Congress of the swamp and overflowed lands within the borders of the States of Illinois and Missouri to those States for purposes of reclaiming and improving such lands. Similar measures were at intervals subsequently introduced; but none met with success until 1849, when aid of this character was rendered the State of Louisiana in draining the swamp lands therein. During the following year (September 28, 1850) this donation was made general by "An act[32] to enable the State of Arkansas and other States to reclaim the swamp lands within their limits." The second section pro-

[28] Donaldson, *Public Domain*, 753.

[29] For example, Arkansas, Florida, Rhode Island and Tennessee. The history of this distribution is still under investigation by the writer.

[30] Alabama, Arkansas, California, Florida, Iowa, Kansas, Minnesota, Mississippi, Missouri, Nevada, Oregon, Wisconsin.

[31] Idaho, Montana, North Dakota, South Dakota, Utah, Washington, Wyoming.

[32] 9 S., c. 84, p. 519.

vided, "That the proceeds of said lands * * * shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid." Like the grant of 1841 for internal improvements, this act also has variously benefited education. It will be noted that the phraseology of the act permits of a deviation of a portion of the proceeds to purposes other than the reclamation of swamp lands. The clause "as far as necessary" supplies the requisite elasticity. Furthermore, three years earlier the Commissioner of the General Land Office had suggested[83] the advisability of granting the swamp lands within the various States "to such States for purposes of education, internal improvement," and other uses. In conformity with this suggestion, eleven[84] out of the fifteen States having swamp and overflowed lands within their borders, have directed either that the residuum of the proceeds left after reclaiming such lands shall be devoted to educational purposes, or that certain definite portions of such lands shall be so appropriated.

Grants for Education, in lieu of Internal Improvement, Saline, and Swamp Lands

In preceding topics we have indicated how Congress has granted internal improvement, saline, and swamp lands to various States, which were frequently used by such States for purposes of education. In the case of the western States admitted since 1889, Congress has adopted a new policy directly beneficial to education. In lieu of grants of land of the above mentioned characters, these States[85] have each received other lands, amounting to 500,000 acres, for the endowment

[83] Sen. Exec. Doc., 30 C., 1 S., p. 32.

[84] Alabama, Arkansas, California, Florida, Indiana, Michigan, Minnesota, Mississippi, Missouri, Oregon, Wisconsin.

[85] Idaho, Montana, North Dakota, South Dakota, Utah, Washington, Wyoming.

of charitable, reformatory, penal, and educational institutions. The new States have not all received lands for similar educational purposes; but the institutions thus benefited include agricultural colleges and universities, blind, deaf, and dumb asylums, normal schools, reform schools, schools of mines, and scientific schools.

Direct Government Control of Education and of Educational Factors

In the topics thus far discussed it will have been noted that in all the cases mentioned the General Government has functioned merely as a patron of education, without exercising or even attempting to exercise an administrative control over the beneficiaries of its largesses. There exist, however, certain definite educational institutions and agencies directly under the administration of the Government, which will be merely mentioned in this summary treatment of the subject. By virtue of the fact that Congress bears the same relation to the District of Columbia that a State Legislature bears to the State, the educational interests of the District are under the exclusive control of the National Government. The three Commissioners of the District of Columbia, appointed by the President by and with the advice and consent of the Senate, are empowered to exercise general control of education therein, to appoint school trustees, and to make such rules and regulations as may be best conducive to the educational interests of the District.[36] Furthermore, Congress annually appropriates one-half of the moneys necessary for the maintenance of the District school system.

Then there may be mentioned the Government control of schools for the education of Indians in different portions of the United States, and of the public schools in the Territory of Alaska, appropriations for the support of which are yearly made in the annual appropriation bills. Moreover, no small

[36] 20 S., c. 180, s. 6, p. 107.

influence in the economic and industrial progress of the Nation has been contributed by the educational force supplied by the Military Academy at West Point and the Naval Academy at Annapolis.

The preceding paragraphs have dealt with the question of direct Government control of education. There now remains to be considered the extent of Government control of educational factors other than money or land endowments. In order that this part of the topic may be clearly defined, it seems best to use the classification of factors given below. And first, by way of introduction, it should be borne in mind that for many years the Government had been accumulating a mass of material in the form of scientific collections and books to which in many cases only a favored few had access. By resolution of Congress of April 12, 1892, however, facilities for research and study in the collections existing in the following establishments of the Government, were extended to investigators and students; namely, the Library of Congress, the National Museum, the Patent Office, the Bureau of Education the Bureau of Ethnology, the Army Medical Museum, the Department of Agriculture, the Fish Commission, the Botanic Garden, the Coast and Geodetic Survey, the Geological Survey, and the Naval Observatory.[87] To this list may be added the Smithsonian Institution. Of these the Bureau of Education possesses the greatest interest for us. Established by an act of Congress approved March 2, 1867,[88] an evident resultant of the same educational and political ideals of the Reconstruction Period which partially manifested their concrete embodiments in the work of the Freedmen's Bureau, the Bureau of Education, while not exercising practical control over education, has, by means of its exhaustive monographs and annual reports, and its function as a central educational distributing agency, contributed incalculably to the uplifting of the educational ideal in the United States. Concerning these establish-

[87] 27 S., Res. 8, p. 395.

[88] 14 S., c. 158, p. 434.

ments of the Government, it is quite beyond the scope of this paper to detail, even were it possible, the influence and effect which their published reports and investigations have exercised on various aspects of intellectual progress.

Miscellaneous

Under this category the writer includes a host of congressional measures which do not logically fall under any of the preceding topics. Such measures may be roughly classified as follows:

1. *Exemption from Duties.*—It has usually been the policy of the Government to exempt from import taxes, various instruments and articles for the use of scientific and literary institutions of learning.

2. *Military and Naval Education.*—An act of November 3, 1893, amending the Revised Statutes, permits the President to detail not more than ten officers of the navy and not more than one hundred officers of the army, to colleges for duties as instructors in their respective professions.[39] Again, measures have been passed donating arms and ordnance to properly certified colleges for use in such instruction. And finally, Congress has authorized the Secretary of the Navy, upon the written application of the governors of the respective States, to furnish and equip vessels for the use of nautical schools at the ports of New York, Boston, Philadelphia, Baltimore, Norfolk, San Francisco, Wilmington, Charleston, Savannah, Mobile, New Orleans, Baton Rouge, Galveston and Narragansett Bay.[40]

3. *Acts of Incorporation.*—In its capacity as a local legislature for the District of Columbia, Congress has passed acts of incorporation for the several higher educational institutions in the District, and for associations for the advancement of literary and scientific progress whose influence is national in scope.

[39] 28 S., c. 13, p. 7.

[40] 18 S., c. 339, p. 121; 21 S., c. 141, p. 505.

To some of these corporations financial assistance has been rendered by the General Government.

4. *Special Grants for Education.*—This subdivision of the topic relates to isolated instances of assistance rendered educational progress in particular cases; such as special grants to academies; grants for the education of the deaf, dumb and blind, both within and without the District; and grants to various educational institutions within the District of Columbia.

PART II

THE INFLUENCE AND EFFECT OF NATIONAL LEGISLATION CONCERNING EDUCATION IN THE PUBLIC LAND STATES EAST OF THE MISSISSIPPI

CHAPTER V

OHIO

As previously indicated, the ordinance of 1785 for ascertaining the mode of disposing of land in the Western Territory, provided that "there shall be reserved the lot No. 16, of every township, for the maintenance of public schools within the said township."[1] During the following year the Ohio Company of Associates was formed for the purpose of purchasing from the Government public lands on the Ohio, to be settled by soldiers of the Revolutionary War. As a result of a memorial from this company, and of the energetic action of Dr. Manasseh Cutler, Congress passed the famous Ordinance of 1787 for the government of the territory northwest of the river Ohio.[2] Article III. of the articles of compact of this ordinance contained the clause that "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." This act was general in scope, applying to all the States that should be carved out of the western territory, and merely preliminary. A few days later, July 23, 1787, in an act defining the powers of the Board of Treasury to contract for the sale of the western territory to the Ohio

[1] *Public Lands, Laws*, c. 14. [2] *Ibid.*, c. 20.

Company, it was provided that the "lot No. 16 in each township or fractional part of a township * * be given for the purposes contained in the said ordinance" [*i. e.*, of 1785]; and not more than two complete townships were "to be given perpetually for the purposes of a university"; furthermore, lot No. 29 in each township was to be granted for purposes of religion.[3] This act, it will be noted, was nothing more than a contract between the General Government and intending purchasers. On the 2d of October, of the same year, the Board of Treasury was ordered to enter into a similar contract with John Cleves Symmes, the only variation consisting of the grant of one township for a university.[4]

The Congress under the Constitution continued the educational legislation begun by its predecessor. In 1792 an act[5] was passed authorizing the grant and conveyance to the Ohio Company of the lands contracted for by virtue of the act of 1787, and providing for "the reservations in the said indentiture expressed"; *i. e.*, the lands reserved for common schools, a university, and religion. During the same year, a large tract of land in the western territory was conveyed to J. C. Symmes and associates, and it was stipulated that similar reservations should be made for educational purposes.[6] Again in 1801, when certain lands in the Symmes purchase were ordered to be surveyed, the sixteenth sections were declared reserved for the purposes expressed in the ordinance of 1785.[7] During the following year Congress passed the Ohio enabling act.

Sixteenth Section Grant

The "act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution

[3] *Public Lands, Laws*, c. 21.

[4] *Journals of Cong.*, XII, 226.

[5] *Public Lands, Laws*, c. 37.

[6] 1 S., c. 30, s. 1, p. 267. The writer again calls attention to the fact that this method of referring to the United States Statutes at Large is to be inerpreted as follows: First volume *Statutes at Large*, chapter 30, section 1, page 267.

[7] 2 S., c. 23, s, 10, p. 112.

and State government, and for the admission of such State into the Union"[8] is of historic educational interest and importance; first, because this act is the first instance of national legislation directly concerned with educational matters in a *State;* and secondly, because the general policy outlined in the Ordinances of 1785 and 1787, and in the successive enactments previous to 1802, is in this enabling act firmly established in fact. Among the provisions of this act it was enacted "that the section number sixteen in every township * * * [or] * * * other lands equivalent thereto, * * * shall be granted to the inhabitants of such township for the use of schools."[9] The convention which met in 1802 conformably to this act framed a constitution which provided that "no law shall be passed to prevent the poor in the several counties and townships within this State from an equal participation in the schools, academies, colleges and universities within this State which are endowed, in whole or in part, from the revenues arising from the donations made by the United States for the support of schools and colleges."[10] In the following year, in response to resolutions of the Ohio Legislature, Congress modified and supplemented the enabling act, whereby reservations amounting to one-thirty-sixth part of the area of the tracts of land known as the United States Military Tract, the Connecticut Reserve, the Virginia Military Reservation, and the Indian lands, were made for the use of schools in the respective townships included within the several tracts.[11]

Specific legislation was enacted by the State Legislature for each of these tracts, and the management of the school lands by the State presents, therefore, a matter of great complexity and confusion.[12] In general, it may be said that the earlier

[8] 2 S., c. 40, p. 173. April 30, 1802.

[9] *Ibid.*, s. 7, p. 175.

[10] *Constitution* 1802, Art. VIII, s. 25.

[11] 2 S, c. 21, p. 225. March 3, 1803.

[12] This subject will be found fully treated in Knight's *Land Grants for Education in the Northwest Territory*, pp. 42 ff.

acts provided for leasing the lands for a short term of years; but this policy was very soon supplanted by a series of acts providing for long term leases extending, for instance, over ninety-nine years.[13] This pernicious system of long term leases, in many cases presenting no opportunity for re-appraisal, finally led to a revulsion of public opinion in the State against the lease system. In order to obliterate the bad politics entering into the management of the school lands, and in order to realize more speedily a school fund, Congress was memorialized in 1824 for permission to sell the school lands granted in 1803, and to invest the proceeds in a permanent fund.[14] This memorial eventuated, in 1826, in the passage of an act of Congress authorizing the Legislature, with the consent of the inhabitants of the respective townships, to sell the lands appropriated for the use of schools, and providing that the proceeds of the sales be invested in some productive fund, the income alone of which should be applied to the maintenance of schools; but it was specifically enacted that each township should be entitled only to such income as should accrue from the proceeds of the sales of the lands granted for the use of such township.[15] The year following, the Legislature passed the first law concerning the sale of these lands in conformity with the provisions of Congress, and also provided for the establishment of a fund for the support of common schools,[1] the faith of the State being pledged to pay 6 per cent. interest on the proceeds which were directed to be paid into the State treasury. A peculiar provision of this law allowed lessees to exchange their leases for sales at prices current when the leases were executed. This provistion of the law of 1827

[13] "From 1803 to 1820 the General Assembly spent its sessions mostly in passing acts relating to these lands. Members of the Legislature not infrequently got acts passed and leases granted either to themselves, to their relations, or to their warm partisans."—Atwater's *History*, 253.

[14] *Amer. State Papers*, IV, 26, 50.

[15] 4 S., c. 6, p. 138. [16] Knight, *Land Grants*, 53.

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was the source of immense losses to the school fund;[17] and it was not until 1838 that the Legislature repealed all laws relating to the surrender of leases of the sixteenth sections.[18]

In the meanwhile Congress passed a series of acts relating in whole or in part to these school lands:

An act of March 3, 1805, reserved from sale the sixteenth sections within certain land districts.[19]

An act of April 21, 1806, authorized the reservation of the sixteenth sections from pre-emption.[20]

An act of March 2, 1807, partially amended the grant of 1803, and authorized the selection of other lands in lieu of those granted by that act for the use of schools in the Virginia Military Reservation.[21]

An act of March 3, 1807, reserved from sale the land granted for the use of common schools in the United States Military Tract and in the Connecticut Reserve.

An act of general tenor of February 29, 1806, reserved from sale the sixteenth sections in the public land districts of Ohio.[22]

An act of April 26, 1816, provided for the reservation of sufficient lands for the support of schools in a tract of land at the Lower Rapids of the Sandusky river.[24]

Reservation of section 16 for schools was made by an act of April 27, 1816, which provided for the sale of a tract of land, 12 miles square, at the British fort of the Miami of the Lake.[25]

The usual proportion of land for the support of schools was reserved by an act of March 18, 1818, providing for the sale of certain lands in the districts of Marietta and Vincennes.[26]

A similar reservation of section 16 in the land districts of Piqua and Delaware was enacted by the act of March 3, 1819.[27]

[17] *Ohio School Report*, 1837, 41.

[18] Knight, *Land Grants*, 55.

[19] 2 S., c. 43, s. 7, p. 345.

[20] 2 S., c. 40, s. 4, p. 395.

[21] 2 S., c. 21, s. 3, p. 425.

[22] 2 S., c. 49, s. 2, p. 448.

[23] 2 S., c. 26, p. 470.

[24] 3 S., c. 102, s. 3, p. 309.

[25] 3 S., c. 131, s. 3, p. 319.

[26] 3 S., c. 18, s. 3, p. 410.

[27] 3 S., c. 92, s. 3, p. 522.

In an act of May 26, 1824, providing for the disposition of the three tracts of land in Tuscarawas Co., retroceded by the Moravian Brethren, the Secretary of the Treasury was empowered to reserve, *inter alia*, "the usual grounds * * * for schools" in the town of Gnadenhutten; and, furthermore, to vest in the Legislature of Ohio the title to a designated one-thirty-sixth part of the several tracts for the use of schools within the same, to be held on the same terms as the other school lands previously granted to the State.[28]

Section 3 of the fractional township act of May 20, 1826, provided for the selection of land for the support of schools within the "French grant" in Sciota Co.[29]

A large portion of the Connecticut Western Reserve was still in the possession of Indian tribes when the cession of 1803 for schools was made by Congress. The school lands within the same had been formally declared reserved from sale in that act, but had not been vested in the State. Hence, on the occasion of the extinguishment of the Indian title to these lands, Congress, by act of June 19, 1834, supplied the deficiency by vesting in the State of Ohio sufficient additional lands which, together with the land already granted, would be equal to one-thirty-sixth part of the Reserve.[30]

An act of March 3, 1839, authorized the trustees of Oxford township, Butler Co., to enter a section of land for the use of schools in lieu of section sixteen in said township.[31]

On August 16, 1842, an act was passed compensating the township of Dublin, Mercer Co., for the loss of certain portions of the section 16, and issuing to the school trustees as indeminity, $737.70 in scrip for the use of the schools.[32]

An act of March 3, 1843, reserved from sale "the section numbered sixteen in each township, which shall remain for the support of common schools," in certain lands ceded by the Wyandot tribe of Indians.[33]

[28] 4 S., c. 174, s. 4, p. 57. [29] 4 S., c. 83, p. 179. [30] 4 S., c. 56, p. 56.
[31] 6 S., c. 157, p. 773. [32] 6 S., c. 176, p. 862. [33] 5 S., c. 91, s. 3, p. 624.

By virtue of an act of February 20, 1845, the reservation of certain lands for schools, resulting from the operation of the acts of April 26 and 27, 1816, is implicitly confirmed to such purposes.[34]

In the following year, August 8, 1846, the inhabitants of township 1, of range 13 east, Seneca Co., were authorized to relinquish certain lands selected for schools, and to obtain others in lieu of them.[35]

An act of August 8, 1848, authorized the trustees of Tymochtee township, Wyandot Co., to select lands for common schools within the township.[36]

Finally, on August 3, 1854, the trustees of the civil township of Marion, Mercer Co., were authorized to select a section of public lands, for the use of the public schools within the township, in lieu of the sixteenth section.[37]

This, in brief, is an outline of congressional action relating to the common school lands of Ohio. From the time of the first State law providing for the sale of these lands, the proceeds thereof were paid into the State Treasury. By a series of special acts the moneys thus accruing were borrowed by the State for its own uses in building canals and for sinking fund purposes.[38] Nor have these laws ever been repealed. The common school fund is not, therefore, an actual fund, but constitutes " an irreducible debt of the State," on which the State annually pays interest, at the rate of six per cent. per annum, for the benefit of the common schools.[39] Furthermore, the Constitution of 1851 pledges the faith of the State to preserve this trust, declaring that " The principal of all funds arising from the sale or other disposition of lands or other property granted or intrusted to this State for educational and religious purposes, shall forever be preserved inviolate and undiminished ;

[34] 5 S., c. 16, p. 724.

[35] 9 S., *Private Acts*, c. 172, p. 26.

[36] 9 S., *Private Acts*, c. 173, p. 27.

[37] 10 S., *Private Acts*, c. 228, p. 818.

[38] Knight, *Land Grants*, 58.

[39] *School Laws*, 1898, Sec. 3954.

and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations."[40]

Ohio received a total of 710,610 acres from the General Government for the support of common schools.[41] The proceeds of the sales of these lands constituted, in 1874, five different funds, as shown in the books of the State auditor;[42] viz., Section 16 School Fund, Virginia Military School Fund, U. S. Military School Fund, the Western Reserve School Fund, and the Moravian School Fund, all of which arose from the specific congressional donations for the use of the schools in the tracts named. Thereafter the Moravian School Fund, which in 1874 amounted to $3,160.58, constitutes a part of the Section 16 School Fund. The total irreducible debt of the State to the common school fund amounted, in 1897,[43] to $3,952,046.28, which, owing to the nature of the various Congressional grants to Ohio, is distributed as follows: Section 16 School Fund, $3,379,903.60; Virginia Military School Fund, $194,371.35; U. S. Military School Fund, $120,272.12; Western Reserve School Fund, $257,499.21. Of this common school fund the State auditor is superintendent.[44]

As the total expenditure for maintaining the Ohio State school system during the year 1896–'97 amounted to $13,712,729.43,[45] the item of $237,162.63 interest on the irreducible State school fund for the same year contributed no more than about 1.7 per cent. towards the total State school expenditures.

University Land Grant

It will be recalled that the act of July 23, 1787, defining the powers of the "Board of Treasury to contract for the sale of Western territory" to the Ohio Company of Associates, provided that "not more than two townships * * be given per-

[40] *Constitution* 1851, Art. VI, Sec. 1.
[41] *State Grants*, 4.
[42] *Report State Auditor*, 1874, 14.
[43] *Ibid.*, 1897, 16.
[44] *School Laws*, 1898, Sec. 3953.
[45] *Ohio School Report*, 1897, 71.

petually for the uses of a university, to be laid off by the purchasers as near the centre as may be, so that the same shall be of good land, to be applied to the intended object by the Legislature of the State." [46] Three days later, the Ohio Company stipulated as a condition of sale that "the land assigned for the establishment of a university * * be as nearly as possible in the centre of the first million and a half acres we shall pay for; for, to fix it in the centre of the proposed purchase, might too long defer the establishment." [47] On the 27th of July Congress acceded to this condition; and we are thus led to note, in this measure, the first endowment by the General Government for the promotion of higher education. The formal contract of purchase between the Board of Treasury and the Ohio Company, bearing the date of October 27, 1787, provides for the grant of the two university townships as enacted by the measure of the preceding July 27th. Not until 1795, however, was the selection of these townships made. Four years later, by order of the Territorial Legislature, the town of Athens was surveyed for the university site; and in 1802 the legislature incorporated "The American University" on the basis of this endowment.[48]

A petition of John Cleves Symmes and associates, dated August 29, 1787, requested of Congress the privilege of purchasing and settling lands in the western territory on conditions similar to those granted the Ohio Company, but requesting the grant of only one township "for the purposes of an academy." [49] On the following October 2nd, the petition was referred to the Board of Treasury for consideration. The upshot of the negotiations was a general agreement, but no contract, with the Board of Treasury for the purchase of a tract of land on the Miami, among the provisions being the condition that one complete township should be set apart for an academy or college. Finally on October 15, 1788, a contract, conformable

[46] *Pub. Lands, Laws*, c. 21.

[47] *Ibid.*, c. 22.

[48] *Ohio School Report*, 1886, 333.

[49] Ch. I, *ante*.

to these conditions, was signed for the purchase of the Miami lands.[50] By 1789 the township for the use of the seminary in the Symmes purchase had been designated and selected; and the formal transfer was completed by an act of Congress of May 5, 1792, empowering the President to grant to John Cleves Symmes and associates "in trust, for the purpose of establishing an academy and other public schools and seminaries of learning, one complete township, conformably to an order of Congress" of October 2, 1787.

On April 30, 1802, Congress passed an act authorizing the assembling of a convention to frame a constitution for the eastern portion of the Northwestern Territory, and providing for the admission of the future State into the Union.[52] The Ohio Constitution of 1802 thus formed contained a provision securing to all an equal participation in the colleges and universities endowed in whole or in part by the United States.[53] Now, in 1799 it had been discovered that thirty-one sections of the university township in the Symmes patent had been sold. In order to remedy the deficiency thus arising, Congress, in the formal act of admission (March 3, 1803) authorized the selection of lands amounting to one complete township within the district of Cincinnati for the use of such university, in lieu of the township previously granted.[54] This is the last Congressional measure concerning the Ohio university lands.

The subsequent history of the university lands is in the main a counterpart of the history of the common school lands. A valuable trust was mismanaged, and for many years the culpable trustee made no attempt at amends. The American University was, in 1804, by act of the State Legislature, superseded by the Ohio University, to which institution were granted the two university townships donated by Congress.[55] This law of 1804 further provided that the university lands were to be

[50] *Ohio School Report*, 1886, 343.
[51] 1 S., c. 30, s. 3, p. 267.
[52] 2 S., c. 40, p. 40.
[53] *Constitution*, 1802, Art. VIII, sec. 25.
[54] 2 S., c. 21, p. 225.
[55] *Ohio School Report*, 1886, 334.

leased by the university trustees for a term of ninety years, renewable forever, at an annual rental of six per cent. on the amount of the valuation. Such lands were, furthermore, to be revalued at the expiration of thirty-five and sixty years, respectively, and at the expiration of ninety a final revaluation was to be made, which should thereafter function as the basis of rental valuation for all time.[56] On the suggestion of the Governor, an ex-officio trustee of the university, that a more liberal policy toward the lessees should be adopted, the Legislature, during the following year, changed the law so as to direct the university trustees to lease the lands for terms of ninety-nine years, at an annual rental of six per cent. interest on the original appraised valuation; provided, however, that no lands should be appraised at less than $1.75 per acre.[57] This minimum valuation was repealed by a law of 1807. A law of 1826 authorized the trustees to sell any of the unleased lands, by virtue of which about 2,000 acres had been sold up to 1876.[58]

Retracing our narrative we note that by September, 1803, the university township in the Symmes tract had been selected, and in 1809 the State Legislature passed a bill establishing the Miami University.[59] This law of 1809 directed the university trustees to lease the university lands to the highest bidder for a period of ninety-nine years, at an annual rental of six per cent. on a valuation of not less than $2 per acre. Such leases were, furthermore, to be subject to a revaluation of the lands every fifteen years. But in 1810 this revaluation provision was repealed, thus practically destroying any permanent value to be derived from the lands.[60] All the lands were readily leased on such favorable terms to lessees; but from 1824 when Miami University opened its doors, until 1873 when it temporarily suspended work from lack of adequate financial support, the institution received from its township of land the meagre income of $5,600 per annum.[61] In 1885 Miami University was reopened, receiving State assistance.

[56] Knight, *Land Grants*, 118, 119. [57] *Ibid.*, 120. [58] *Ibid.*, 120.
[59] *Ohio School Report*, 1886, 335. [60] Knight, *Land Grants*, 123. [61] *Ibid.*, 124.

The mere statement of these facts undoubtedly imposes upon one's judgment the conviction that the losses sustained by Ohio's two State institutions are indefinitely great. In fact, no other issue could have been expected when the splendid endowments aggregating 69,120 acres were trammeled by a series of long-term leases extending over periods of ninety-nine years without frequent opportunities for re-appraisal.[62] Thus, for instance, the aggregate valuation of certain Ohio University lands for taxation in 1883 was $1,060,000, while the valuation of the same lands made in the year 1805, and upon which the lessees were paying a rental of six per cent. interest per annum, was $70,000.[63]

The Miami University lands were, in 1893, producing an annual income of $5,894;[64] while from the statistics at hand the writer estimates that during the year 1897 the Ohio University received about $10,000 income from its land endowment. Since 1896 the State has provided for the further maintenance of these two institutions. In this year a law was passed providing for a fund to be known as the "Ohio and Miami University Fund," derived from a 0.3 mill State tax, of which seven-twelfths are granted to the Ohio University and five-twelfths to the Miami University.[65] From this source, in 1897, the former received $25,305, and the latter, $20,511.

Saline Lands Grant

As early as May 18, 1796, in an act providing for the sales of the public lands in the Northwest Territory, Congress

[62] A unique piece of legislation is worth recording. In 1841, the Ohio University trustees undertook to revalue the university lands, in accordance with the law of 1804. The lessees held that the law of 1805 invalidated the law of the previous year. A test case was brought before the Supreme Court of the State, which decided that such revaluation was legal. The pressure brought to bear upon the Legislature was so great, that in March, 1843, an act was passed annulling the decision of the Supreme Court, and declaring the revaluation clause of 1804 invalid.—See Knight, *Land Grants*, 120, 121.

[63] Knight, *Land Grants*, 121.

[64] *Catalog*, 1893–94, VII.

[65] *School Laws*, 1898, 46.

enacted that every salt spring, together with the section of one mile square which included it, should be reserved from sale.[66] The enabling act of 1802 granted to the State of Ohio, "the six miles reservation including the salt springs commonly called the Sciota salt springs, [and] the salt springs near the Muskingum river * * with the sections of land which include same, * * to be used under such terms and conditions and regulations as the Legislature shall direct;[67] provided that the Legislature shall never sell, nor lease same for a longer period than ten years." These salt spring lands were later reserved from public sale by an act of Congress of February 29, 1808, providing for the disposition of public lands in Ohio.[68] In 1824 the State Legislature petitioned Congress for authority to sell these saline lands for educational purposes.[69] On the following December 28, 1824, Congress authorized the Legislature to sell the salines described in the act of 1802, "the proceeds thereof to be applied to such literary purposes as the Legislature may hereafter direct."[70]

In 1827, the proceeds of the sales of these lands were ordered by the Legislature to form the nucleus of a State common school fund, and between 1835 and 1845 an annual pro rata distribution of interest was made among the counties.[71] In the latter year the interest distribution suddenly ceased, and so continued unpaid until 1873, when the State was pledged by law to pay the annual interest in accordance with the law of 1827.[72] Knight's investigation (q. v.) indicates that up to 1884 even this interest was never paid.

The proceeds of $41,024.05[73] accruing from the sale of the thirty-five sections of salines were thus applied by the State to its own uses. At the present time the State is pledged to pay "interest annually, at the rate of six per cent. per annum,

[66] 1 S., c. 29, s. 3, p. 464. [67] 2 S., c. 40, s. 7, p. 175.
[68] 2 S., c. 26, p. 470. [69] *Amer. State Papers, Pub. Lands*, III, 724.
[70] 4 S., c. 3, p. 79.
[71] Knight, *Land Grants*, 59. [72] *Ibid.*, 60. [73] *Ibid.*, 60.

upon all money which has been paid into the State treasury on account of sales of lands commonly called 'salt lands;' * * * and the money received from such sales shall constitute an irreducible debt of the State." [74]

Surplus Revenue of 1836

Of this grant Ohio received $2,007,260.36. By an act of the State Legislature (1837), this money was ordered to be divided among the counties, to be loaned until 1850 to internal improvement companies to the State, to the counties, or to the canal fund, at six per cent. interest. Five per cent. interest on such loans was, moreover, to be devoted to the use of schools in the counties.[75] In the school law of 1838 there was inserted a provision that the interest on the surplus revenue should be used for common school purposes.

An act of 1843 authorized $1,500,000 to be borrowed to pay creditors of the State's public works. This sum was directed to be abstracted from the surplus revenue, and it was ordered that five per cent. interest on the amount so taken should be paid the school fund.[76] An act of 1851 added to the common school fund "the balance of the surplus revenue fund." [78]

What the final reservation of the surplus revenue for school purposes in Ohio may have been, the writer has not been able definitely to determine. The school report of 1837 indicates that $101,363 annual interest on the surplus revenue was then due the school fund.[78] But the identity of this fund was lost in 1851 by its absorption into the "Common School Fund."

Swamp Lands Grant

By virtue of the act of Congress of 1850 granting to the several States the "swamp lands" within their borders, Ohio has been credited with 117,931 acres,[79] of such lands. In 1851

[74] *Ohio School Laws*, 1898, Sec. 3952.

[75] Bourne, 95. [76] *Ibid.*, 96. [77] *Ibid.*, 98.

[78] *Ohio School Report*, 1837, 48. [79] *State Grants*, 8.

the State Legislature provided for the payment of the proceeds of the sales of these lands into the State treasury on the account of the school fund.[80] A law of 1873, which now stands on the school laws of the State, directs the payment by the State of six per cent. annual interest "upon all money heretofore paid or which may hereafter be paid into the State treasury on account of sales of swamp lands granted to the State of Ohio by act of Congress; the money received from such sales shall constitute an irreducible debt of the State."[81] The "Swamp Land Indemnity Fund" on the books of the State auditor amounted to $24,742 in 1897, with an interest of $17,857 due on the fund.[82]

Agricultural and Mechanical College Grant

By virtue of the agricultural and mechanical college act of 1862, Ohio received 630,000 acres in scrip.[83] This grant was accepted by the State Legislature on February 9, 1864, and in 1865 an act was passed authorizing the sale of the scrip on conditions therein expressed, "at a rate of not less than 80 cents per acre."[84] Difficulty being experienced in selling at this price, the law was modified, and by December, 1865, the entire scrip had been sold at 53 cents per acre, the total proceeds of the sales amounting to $342,450, which sum was paid into the State Treasury and granted 6 per cent. semi-annual interest.

After much investigating and legislation, wherein both the Miami and Ohio Universities were considered for the joint recipiency of the grant, an act was finally passed (March 22, 1870), to establish and maintain an Agricultural and Mechanical College in Ohio,[85] and in 1873 the institution was opened. The year previously, the endowment fund had, by the accumu-

[80] Knight, *Land Grants*, 60.

[81] *School Laws*, 1883, Sec. 3952; *School Laws*, 1897, Sec. 3952.

[82] *State Auditor's Report*, 1897, 16.

[83] *State Grants*, 4. [84] *Ohio School Report*, 1886, 358. [85] *Ibid.*, 361.

lation of interest, increased to about $486,000.[86] The fund was, in 1873, furthermore increased by the grant of the proceeds of the congressional cession of certain lands in the Virginia Military District (q. v.) By an act of Legislature, 1878, the name of the agricultural college was changed to the "Ohio State University."

In 1877[87] the Ohio State University Fund was made a portion of the irreducible State debt, amounting in 1897 to $547,776, upon which the State paid $32,861 interest.[88] In 1891 provision was made by the State for an annual tax levy, which, unless otherwise designated by the Legislature, shall be one-tenth mill tax, which constitutes the "Ohio State University Fund."[89] From this source the State University received $132,985 in 1897.[90]

The Virginia Military District Cession

When Virginia surrendered to the General Government her claims to the Northwest Territory in 1781, she reserved certain lands lying between the Great Scioto and Little Miami rivers to satisfy the bounty land warrants promised her soldiers for services in the War of the Revolution.[91] After these warrants had been satisfied, a large tract of comparatively worthless land remained for years in the possession of the General Government. By an act[92] of Congress of February 18, 1871, this tract was granted to Ohio, and in April, 1873, the grant was accepted by the State. The State, in turn, transferred the land to the agricultural and mechanical college recently chartered. Concerning the exact area of this grant nothing definite was known in 1886; 70,000 acres had then been discovered and turned over to

[86] *Ohio School Report*, 1872, 813.
[87] Knight, *Land Grants*, 151.
[88] *Rep. Auditor*, 1897, 16.
[89] *School Laws*, 1898, Sec. 3951.
[90] *Rep. Auditor*, 1897, 17.
[91] *Ohio School Report*, 1886, 358.
[92] 16 S., c. 56, p. 416.

the Ohio State University. From these lands, $38,343 had been realized in 1885, of which $13,655 were added to the endowment fund, and $18,042 were expended in buildings, the balance remaining unappropriated.[93]

Agricultural Experiment Stations Act of 1887

The annual appropriation of $15,000 arising by virtue of the act of Congress of March 2, 1887, has been appropriated by the State to the work of the State Agricultural Experiment Station situated at Wooster.[94]

Government Endowment of 1890

This grant arising by act of Congress of August 30, 1890, has always been appropriated for the further endowment of the Ohio State University[95] in accordance with the conditions stipulated in the aforesaid act.

[93] *Ohio School Report*, 1886, 359.

[94] *Year Book, U. S. Dept. Agric.*, 1895, 559.

[95] *Ohio State Univ. Catalogue*, 1894–95, XIII.

CHAPTER VI

TENNESSEE

By an act of Assembly, December 22, 1789, North Carolina authorized her senators and representatives in Congress to cede her western territory to the United States, which deed of cession provided, among other things, that the inhabitants of the district thus ceded should "enjoy all the privileges, benefits, and advantages set forth in the ordinance" of 1787.[1] This cession was accepted by Congress on April 2, 1790, and during the following month (May 26, 1790), in an act for the government of the Territory south-west of the Ohio River, it was stipulated that the inhabitants of said Territory should enjoy the same rights and privileges as were accorded to the inhabitants of the Northwest Territory by the ordinance of 1787.[2] In 1796, Tennessee was admitted into the Union; but it was not until 1806 that Congress accorded to the State the same educational advantages that had been accorded to the Northwest Territory. In the latter year an act of Congress authorized the State to "appropriate 100,000 acres, which shall be located in one entire tract, * * * for the use of two colleges, one in East and one in West Tennessee, to be established by the Legislature thereof; and 100,000 acres, in one tract, * * * for the use of academies, one in each county * * * to be established by the Legislature. * * * And the State of Tennessee shall * * * locate 640 acres to every six miles square * * * for the use of schools for the instruction of children forever."[3] This grant was accepted by Tennessee on September 26, 1806.

[1] Donaldson, 78.
[2] 1 S., c. 14, p. 123.
[3] 2 S., c. 31, s. 2, p. 382. April 18, 1806.

Grant for Common Schools

The congressional grant to Tennessee of public land for schools is unique in two respects. In the first place, there were no vast tracts of land to which the General Government could cede a clear title to the State, for the reason that North Carolina had previously issued extensive grants to settlers in the days preceding the cession to the United States of the district out of which the State of Tennessee was formed. Hence arises the peculiarity attaching to the grant to Tennessee, in that this is the only Government grant of a general nature and applying to an entire public land State which does not make mention of the reservation of the sixteenth section in each township for the use of common schools. The prior settlement of this State therefore necessitated a grant in general terms, and it was consequently enacted that "the State of Tennessee shall, moreover, * * * locate 640 acres to every 6 miles square, * * * where existing claims will allow the same, which shall be appropriated for the use of schools for the instruction of children forever."[4] In the second place, it will be observed that this grant does not explicitly vest the title to the school lands in various townships, as was the case in the grant to Ohio and to every other State until the admission of Michigan in 1837, but it vaguely vests the school lands *in the State* for the use of schools.

In the same year that Congress made this grant, the State Legislature ordered the survey of lands to which the Indian title had been extinguished, and directed the reservation of 640 acres in each six miles square for schools.[5] In various laws passed concerning these school lands the conditions of reservation changed with the nature of the tracts, and the 640 acres were, for instance, directed to be selected in one or more parcels.[6] All the lands granted for educational purposes were

[4] 2 S., c. 31, s. 2, p. 382. April 18, 1806.

[5] Haywood and Cobbs, 46. [6] *Ibid.*, 126.

the subject of prolific legislation. By an act of Legislature in 1813, the academy trustees of the different counties were authorized to lease the school lands in their respective counties for any term not exceeding five years, "upon such terms as the said trustees shall think most expedient for the benefit of their respective academies."[7] And the board of trustees were furthermore empowered to make such rules and regulations for leasing the school lands as would not be inconsistent with the laws of the State. This enactment was repealed four years later by an act empowering each county court to appoint commissioners to take charge of the school lands, "whose duty * * * it shall be to lease out such lands upon the best terms they can."[8] These rents were directed to be paid into the hands of each county trustee, and upon the commissioners devolved the duty of providing for the erection of school houses out of these funds. The peculiar conditions attaching to the grant undoubtedly retarded a rapid selection of lands. We read, for instance, that up to 1821, "no more than 44 tracts, containing in the aggregate 22,705 acres [had] been secured for the use of schools."[9]

An act of the year 1825 made elaborate provisions for the sale of the school lands,[10] but, for some reason, this was declared unconstitutional by the State Supreme Court,[11] and in the following year another law was passed, again providing for their lease.

The act of 1827 is the earliest legislation discovered by the writer pertaining to a definite State school fund. This act provides that all the lands which had been "appropriated to the State for the use of schools, and all the rents and profits that had accrued from the school lands, should be appropriated to the encouragement and support of common schools forever;" and that all the moneys that had accrued or would accrue from this source should form a portion of the capital of the

[7] Haywood and Cobbs, 158. [8] *Ibid.*, 159. [9] Niles's Register, XXI, 299.
[10] Haywood and Cobbs, 166. [11] Caruthers and Nicholson, 645.

new State bank.[13] This legislative enactment was confirmed by the Constitution of 1834, wherein the funds already appropriated and those to be appropriated by the General Assembly for the use of common schools, were declared a perpetual fund, of which the principal should never be diminished, and the interest only should be used for the support of common schools. Furthermore, provision was made for the appointment by the General Assembly of a board of commissioners, who should have general superintendence of this fund.[14] This board of commissioners was designated by the General Assembly during the following year, and consisted of the State treasurer, the comptroller, and the newly created superintendent of public instruction, the last named official being practically the executive officer of the board.[14]

During the first two decades, at least, of the State's existence, act after act was passed, either postponing or even entirely remitting the payments of rents on school lands.[15] The general character of the legislation as outlined in this paper would naturally lead one to expect heavy losses to the school fund. In fact, Supt. McEwen, writing in 1837, notes that the common school fund was much scattered, and he remarked that "some of it is in a very precarious condition."[16] He further writes in 1837, that in that year the total amount of the funds (from the congressional school lands) collected and invested up to 1837 was $310,346.[17] The revenue of the school fund expended from March 1, 1836, to October 1, 1837, was $17,705.[18]

On January 19, 1838, the Legislature passed "an act to es-

[13] Caruthers and Nicholson, 171–172

[14] *Constitution*, 1836, Art. XI, Sec. 10.

[14] Caruthers and Nicholson, 168–171.

[15] See, for example, Haywood and Cobbs, 124 *ff.*

[16] Quoted by Supt. Garrett, *Tenn. Sch. Rep.*, 1891, 30.

[17] *Ibid.*, 31. [18] Bourne, 112.

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tablish a State bank to raise a fund for internal improvements, and to aid in the establishment of a system of education," the main provisions of interest to us authorizing the application of the school fund to the capitalization of the State bank.[19] The surplus revenue (q. v.) was also added to the bank's capital, and, in return for the moneys advanced by the State, the bank was required to appropriate $100,000 of its annual dividends for the use of the common schools.[20] On July 1, 1841, the capital of the bank consisted of $702,580.36 of the school fund.[21] It seems that the conditions imposed by the law of 1838, combined with the economic conditions of the times, made heavy drafts upon the bank's resources; and finally, in 1865, the bank was declared insolvent.[22] A legislative committee in 1869 declared the amount due the school fund by the State to be $1,315,435.[23]

Retracing our narrative, it will be recalled that Congress authorized the State of Tennessee to locate 640 acres to every six miles square for the use of schools. While the wording of the cession act seems to leave it an open question whether the school lands were to vest in the inhabitants of the townships, or in the State for purposes of a centralized State school fund, an act of Congress of February 15, 1843, apparently dispels all doubts as to the intention of Congress on this point. This act sanctions such sales as may have been made. It furthermore authorizes the Legislature to sell the lands appropriated by Congress for the use of schools, to invest the same in some productive fund, and to apply the income to the support of schools *within the respective townships for which the lands were set apart.*[24] Accordingly, acts of the Legislature, of 1844 and 1846, provided that the school lands of the State

[19] Bourne, 111. [20] *Ibid.*, 112.

[21] How much of this school fund is to be credited to sales of school lands, the writer has been unable to determine.

[22] Bourne, 115. [23] *Tenn. School Report*, 1869, ciii.

[24] 5 S., c. 33, p. 600.

might be sold if the people residing in the respective townships should so declare by ballot; moreover, the Bank of Tennessee was constituted the custodian of the funds thus arising for the benefit of the townships.[25]

It remains now to note that the Constitution of 1870[26] recognizes the inviolable character of the school fund in the same terms employed in the Constitution of 1834. The school law adopted three years later recognized the permanent school fund of the State to be $1,500,000. To this amount was added the unpaid interest due the school fund by the State, amounting to $1,012,500, thus making a total fund of $2,512,000 for which the S ate issued a certificate of indebtedness paying six per cent. per annum, payable semi-annually.[27] Inquiry of State officials has not elicited the much-desired information as to how much of this fund has arisen from school lands alone; for, as will appear farther on, both the Surplus Revenue of 1836 and the Distribution Act of 1841 have contributed to this fund.

In addition to the acts already mentioned, Congress has passed two other acts relating to educational matters in Tennessee. In 1882 (December 23) the city of Memphis was granted a certain lot of land within its limits, for use either as a library site or for public school purposes, in consideration of the transfer to the United States of certain valuable land within the city.[28] Two years later (June 12, 1884) the act of 1843 was amended, and the State authorized to make needful rules and regulations for protecting the school lands and for leasing them for any term of years.[29]

Had Tennessee come into actual possession of the nominal Government grant of one thirty-sixth of her area for school purposes, there would have accrued to her school fund over

[25] Shankland's *Pub. Statutes*, 239.

[26] *Constitution*, 1870, Art. XI, Sec. 10. [27] *School Laws*, 1895, 20.

[28] 22 S., c. 8, p. 399. [29] 23 S., c. 79, p. 41.

800,000 acres of school lands. How far short of this amount the grant has really fallen, the writer has not yet been able to determine.

Government Grant for Academies

The congressional grant to Tennessee of "100,000 acres in one tract * * * for the use of academies, one in each county in said State, to be established by the Legislature,"[30] is the only general donation for institutions of this character to be found in congressional annals. In this same year the Legislature passed a law providing for the appointment of three commissioners to select the academy lands in one tract conformably to the cession act of Congress; and it was further provided that the treasurer of East Tennessee should keep the account of the moneys accruing from the academy land, which moneys should be subject to the future disposal of the Legislature of the State; moreover, that the interests and profits of these lands should "enure to the use equally of the several academies to be established * * * in the several conuties."[31] An act of 1813 provided for the payment of the moneys due West Tennessee to its treasurer; and the treasurers of both East and West Tennessee were authorized to invest the academy fund in the stock of either the bank of Nashville or the bank of the State of Tennessee. During this same year, the academy trustees of the various counties where such institutions had been established, were authorized to lease the public school lands, and to use the funds accuring therefrom for the maintenance or the building of academies.[32] This act was repealed in 1817, although the moneys that had been thus used for the purposes of the academies were not required to be repaid for common school purposes.

Apparently the academy moneys were not always invested in bank stock as required by the law of 1813; for in 1825 the

[30] 2 S., c. 31, s. 2, p. 382. April 18, 1806.

[31] Haywood and Cobbs, 121.

[32] *Ibid.*, 158.

Legislature ordered the treasurers of East and West Tennessee to invest all the academy moneys in the stocks of the bank of Tennessee and its branch bank at Knoxville. The banks were required to pay to the trustees of the county academies semi-annual interest at six per cent. on the funds thus invested, "each county in the State being entitled to as large a portion as any other county;" and any county not having an academy in existence should have its share and the accrued interest thereon placed to its credit.[33]

What academies were established in accordance with the law of 1806, and what proportions the academy fund assumed, the writer has been unable to determine. It is mentioned, for instance, that Hampden Sidney Academy was established at Knoxville, and opened on January 1, 1817; and that in 1820 this academy was united with East Tennessee College.[34] Whatever academies were established must have experienced difficulty in endeavoring to subsist on the meagre funds allotted from the Government grant. That those funds were meagre, there can be no doubt. The statutes of these early days are filled with a host of relief measures, postponing the payments of interest and principal in the interests of the settlers on the academy land.[35] The peculiarities attaching to the location of educational lands in Tennessee have been already mentioned (see school lands). An *en bloc* location on land already overrun with settlers led to a seemingly endless strife between the State and the settlers. Finally, in 1829, in order to arbitrate this matter, the Governor was authorized to grant to the trustees of the county academies of the State a one-half township of land in one entire tract, in lieu of the disputed lands of the 100,000 acres grant; and each county acquiescing to this arrangement was directed to receive its pro rata share of the one-half township.[36]

Until 1829 the academy funds were invested in bank stock,

[33] Haywood and Cobbs, 165.

[34] Merriam, 64. [35] Haywood and Cobbs, 124 *ff.* [36] *Ibid.*, 138.

as previously indicated. In this year the banks were directed to apportion the academy fund among the county academies, and to pay over such funds to the trustees of the respective academies. To the trustees was granted power to loan any of these moneys for a period not exceeding twelve months,[37] for the use of the respective academies.

It seems that the law of 1838 establishing a State bank did not appropriate the academy moneys to the capital of the bank; for the code of Tennessee of 1857–58 enumerates, among the powers of the academy trustees, that "the trustees have the power to lend any of the money in their hands for any period not exceeding twelve months.[38] This is the latest reference on the subject found by the writer.[39]

University Land Grant

On September 11, 1806, the State Legislature chartered Cumberland College on the foundation of Davidson Academy, Nashville, which had been established by the North Carolina Legislature in 1785, and to this institution was granted a one-half share of the congressional endowment for a college in West Tennessee.[40] An act of October 26 of the following year bestowed the East Tennessee grant upon Blount College, established in 1794, which was now (1807) incorporated as the East Tennessee College at Knoxville.[41] Cumberland College was, in 1826, transformed into the University of Nashville; while the East Tennessee College became, successively, East Tennessee University in 1840, and the University of Tennessee in 1879.

The history of the college lands and funds presents a most peculiar and confusing narrative of events. The congressional

[37] Haywood and Cobbs, 170. [38] Meigs and Cooper, 259.

[39] A letter from Professor Garrett, former State superintendent of public instruction, indicates that the history of this fund, and particularly of its present status, is a topic about which very little is at present known.

[40] Merriam, 23. [41] Merriam, 64.

act of cession provided that none of the lands granted for colleges and academies should be sold for less than two dollars an acre. Had this condition been strictly recognized, the endowment fund for each college would have amounted to at least $100,000. The State was, however, limited to a selection of lands *en bloc* and within a restricted territory already overrun with settlers, thus rendering difficult the problem of carefully selecting the college lands. On the same day that the congressional grant was formally accepted (1806), the Legislature directed the college and academy lands to be located in such a manner as to compel the selection of lands already occupied by settlers; and the law further provided that settlers might retain their lands on the payment of one dollar an acre,[43] payable in ten annual instalments.[45] The college moneys were directed to be paid to the treasurer of the land district, and to await the future action of the Legislature.[44] Seven years later the Legislature ordered one-half of the college moneys to be paid to the trustees and president of Cumberland College, to be by them invested in the stock of either the Nashville Bank, or the Bank of the State of Tennessee; and a like proportion was directed to be invested by the treasurer of East Tennessee and the land commissioners in similar bank stock for the benefit of East Tennessee college.[45]

During the years following 1806, the Legislature passed a series of relief measures postponing the payments of instalments on the purchase price, and either extending the times of, or remitting entirely, the payments of interest.[46] This species of relief and remedial legislation continued until 1829, when the Legislature offered to grant to each of the colleges a one-half township of land in lieu of the disputed lands in the congressional grant, provided the institutions released all claims to such lands.[47] In response to this "take what you can get" offer, the trustees of East Tennessee College released

[43] Niles's Register, XXI, 299. [45] Sanford, 35.

[44] Haywood and Cobbs, 121. [45] *Ibid.*, 157. [46] *Ibid.*, 124 *ff.* [47] *Ibid.*, 138.

their claims in 1830, and accepted a one-half township. Eight years later the University of Nashville (formerly Cumberland College) also accepted the one-half township substitution.[48]

Out of the 11,520 acres thus granted, East Tennessee College had, by 1839, realized $34,397,[49] while the University of Nashville received about $40,000 from the sale of its one-half township.[50] The data at hand seem to indicate that the present University of Tennessee (formerly East Tennessee College and University) received a total of about $60,000 from the Congressional grant of 50,000 acres, most of which was expended in buildings, a college farm, and for other expenses. Of this sum, $5,000 are still held by the University in State certificates, and are said to represent the balance of the original endowment fund.[51] What may be the present condition of the fund of the University of Nashville, the writer has been unable to determine. This University had an interesting and varied experience, suspended operations for a time, and finally reorganized its literary department in 1875 as the State Normal College, better known as the Peabody Normal College.

Distribution Act of 1841

Tennessee's share was $29,703.28.[52] By an act of State Legislature, February 3, 1842, one-half of this was ordered deposited in the bank of Tennessee as a part of the common school fund.[53] For the history of this fund see "Grant for Common Schools."

Surplus Revenue of 1836

The $1,433,757.58 received by Tennessee were, by an act of January 19, 1838, "to establish a State bank, to raise a fund for internal improvement, and to aid in the establishment of a system of education," appropriated towards the $5,000,000

[48] Sanford, 59. [49] Sanford, 60. [50] Merriam, 39.

[51] *Tenn. School Report*, 1896, 217 *ff.*

[52] Donaldson, 753. [53] Bourne, 116, foot-note.

capital of the projected State bank, of which capital the school fund and some other moneys were to form a part.[54] Of the dividends of this bank $100,000 were to be annually appropriated for common schools, and $18,000 for the county academies. During the nineteen years ending October 1857, the academies had received $325,667 from this source, being $16,333 short of the true amount.[55] What amounts may have accrued to the common schools, the writer has not been able to determine.

Bourne has indicated as the result of his investigations that a portion of the interest on this surplus revenue deposit may be considered as having contributed to the support of common schools. For example, the revenue on the school fund proper, in 1837, was only about $11,000 a year. The $100,000 directed to be paid the schools by the bank, less this income, gives $89,000, which equals about six per cent. on the surplus revenue.[56]

It is plain, however, that for a time the schools derived an advantage from the surplus revenue; for it is probable that without the receipt of this money such a relatively large appropriation for schools would not have been made. Nevertheless, the bank was forced to succumb to the heavy drafts made upon its resources, and in 1865 was declared insolvent. Both the surplus revenue fund and the school fund had been used up in this State banking venture, and this debt of the State to the school fund was recognized in the Constitution of 1870 to be $1,500,000.[57] A law of 1873 added to this amount the accrued interest, and thus recognized a permanent State school fund of $2,512,500, upon which the State issued a certificate of indebtedness paying six per cent. interest semi-annually.[58]

[54] Bourne, 111.

[55] *Rep. Controller*, 1857, 12.

[56] Bourne, 112, foot-note.

[57] *Constitution*, 1870, Art. XI, sec. 12.

[58] *School Laws*, 1895, 18.

Agricultural and Mechanical College Grant

The existence of the Civil War had prevented Tennessee from accepting the agricultural college grant of 1862 within the time limit set by Congress. Accordingly, by a joint resolution of 1867,[59] Congress extended the provisions of this act to Tennessee, which were accepted by the State Legislature on February 1, 1868. The 300,000 acres in scrip were readily sold, and the proceeds amounting to $396,000 were invested in six per cent. Tennessee bonds, interest payable semi-annually. On January 16, 1869, an act of the General Assembly appropriated the fund thus arising to the East Tennessee University at Knoxville, on condition that the University establish an agricultural college conformably to the act of Congress.[60] In 1879, the East Tennessee University was reorganized as the University of Tennessee, and as a result of the reorganization the agricultural college, which had been a department of the former institution, now became an integral department of the State University.

Agricultural Experiment Station Act of 1887

This annual gift of $15,000 from the General Government for the advancement of agriculture by encouraging the establishment of agricultural experiment stations, was accepted by the State Legislature on March 28, 1887, and bestowed upon the agricultural department of the University of Tennessee.[61]

Government Grant of 1890

To this endowment the State Legislature assented in an act passed February 20, 1891, and in conformity to the provisions of the congressional grant the moneys annually arising from this source are vested in the University of Tennessee.[62]

[59] 14 S., Rev. 31, p. 569. Feb. 28, 1867.

[60] *Acts* 1868–69, 12. [61] Merriam, 89.

[62] *Register Univ. of Tenn.*, 1896–97, 7.

MISCELLANEOUS

Grant to West Tennessee College

In 1846 Congress surrendered to the State of Tennessee all title which the United States had in certain lands south and west of the Congressional Reservation Line, and, furthermore, released to the State the proceeds of such lands within that tract which had been sold by the State as agent for the United States. This surrender was made upon the express condition that out of the proceeds of the lands thus ceded, the State would apply $40,000 towards the establishment and support of a college at Jackson, Madison County.[63] The Legislature, accordingly, established and endowed, at Jackson, the West Tennessee College, which before the Civil War was a prosperous and successful institution. The institution resumed work in 1865, and continued thus until August, 1874, when the entire endowment fund and buildings were turned over to the trustees of the Southwestern Baptist University,[64] an institution still in existence.

Special Grant to East Tennessee University

An act of Congress of June 22, 1874, appropriated $18,500 for the relief of the East Tennessee University because of the aid given to the army of the United States by the University during the Rebellion.[65]

Grant to Fiske University

The United States had purchased 3¼ acres of land on the site of Fort Houston. This tract of land was, by act of June 23, 1874, granted to the Fiske University, of Nashville, for educational purposes.[66]

[63] 9 S., c. 92, p. 66. Aug. 7, 1846.

[64] *Tenn. Sch. Rep.*, 1875, 240–244.

[65] 18 S., c. 440, p. 604.

[66] 18 S., c. 478, p. 276.

CHAPTER VII

INDIANA

INDIANA constituted a portion of the Northwest Territory, and thus fell heir to the educational rights and privileges enumerated in the Ordinance of 1785, which reserved "the lot No. 16, of every township, for the maintenance of public schools within the said township,"[1] and in the Ordinance of 1787, which stipulated that "schools and the means of education shall forever be encouraged."[2] The act of Congress of May 7, 1800, creating the Indiana Territory, specifically enacted that the inhabitants of the Indiana Territory should "enjoy all the rights and privileges given by the Ordinance of 1787."[3]

Sixteenth Section Grant

As early as March 26, 1804, Congress passed the first act relating definitely to the school lands in Indiana. In that act provision was made for the disposal of public lands in the Territory, and in the Vincennes land district thus created section "number sixteen" was "reserved in each township for the support of schools within the same."[4]

An act of March 3, 1805, imposed the same conditions of sale on the lands purchased from the Indian tribes of the Wabash as were imposed on the other lands lying within the district of Vincennes.[5] The year following, April 21, 1806, Congress declared section sixteen reserved from pre-emption.[6] By an act of 1808, the Territorial Legislature assumed control

[1] *Public Land, Laws*, c. 14.
[2] *Ibid.*, c. 20.
[3] 2 S., c. 41, s. 2, p. 59.
[4] 2 S., c. 35, s. 5, p. 279.
[5] 2 S., c. 43, s. 1, p. 343.
[6] 2 S., c. 40, s. 4, p. 395.

of the school lands, empowering the common pleas courts of the Territory to lease the lands for a term not exceeding five years.[7] Two years later Congress reserved section number sixteen from sale in the tract of land acquired from the Indian tribes by the treaty of Fort Wayne.[8] With these various enactments, the Territorial period draws to a close.

On April 19, 1816, Congress passed the act to enable the people of the Indiana Territory to form a Constitution and State Government. Among the propositions offered to the constitutional convention for acceptance or rejection was the stipulation that "section numbered sixteen, in every township, * * or * * other lands equivalent thereto, * * * shall be granted to the inhabitants of such township for the use of schools."[9] Accordingly, a State Constitution was formed, the ninth article of which provided for the improvement of the lands granted by the United States for the use of schools; and it also provided for the proper application of the funds arising therefrom; furthermore, no lands of this character were to be sold prior to 1820.[10] An act of the State Legislature of December, 1816, provided for the appointment of a superintendent of the school section, and for the leasing of the lands for a term not exceeding three to seven years.[11] But not until January, 1824, was a definite attempt made by the State to establish a system of public education.

In the meantime, Congress had passed a series of minor enactments relating to the school lands of the State. An act of 1819 establishing the two additional land districts of Terre Haute and Jeffersonville, reserved "section numbered sixteen" in each township "for the support of schools therein."[12] In 1822, Congress authorized the selection of sections "numbered twenty" in each township of the tracts of land known

[7] *Ind. Sch. Rep.*, 1885–86, pt. II, 7.

[8] 2 S., c. 35, s. 1, p. 590. April 30, 1810.

[9] 3 S., c. 57, s. 6, p. 290. [10] *Constitution*, 1816, Art. VIII, sec. 2.

[11] *Ind. Sch. Rep.*, 1885–'86, 8. [12] 3 S., c. 92, s. 3, p. 522.

as "Clark's grant" and the "Vincennes donation tract" for the use of schools within those tracts.[13] This was followed by an act establishing the Fort Wayne district, and reserving from sale "the section numbered sixteen * * * for the support of schools."[14] During the next year a similar reservation of section sixteen was made in the tract of land ceded by the Wea Indians.[15]

Events now bring us to the school law of 1824, which made provision for the election of three township trustees whose duties included the management of the school lands.[16] No restrictions were imposed regarding the time limits of leases, and the Ohio policy might have been followed had not a law of 1825 restricted the term of leasing the lands to a maximum of ten years.[17] The terms of the congressional grant did not confer upon the State the power to sell these school lands. Nor did the Ohio policy of long-term leases appeal to the sense of the people of Indiana. Accordingly, in 1827 the General Assembly petitioned Congress for permission to sell the lands reserved for schools on the same conditions that had been vested in Ohio during the previous year.[18] Congress granted this petition during the following year (1828), in an act which authorized the Legislature to sell the lands previously granted for the use of schools, and to invest the money thus arising in some productive fund, "the proceeds [income] of which shall be forever applied under the direction of the said legislature, for the use and support of schools within the several townships and districts of country for which they [the lands] were originally reserved and set apart." This act conditioned the sales on the previous consent of the inhabitants of the townships, and furthermore provided that

[13] 3 S., c. 87, s. 1, p. 686. May 7, 1822.

[14] 3 S., c. 126, s. 3, p. 702. May 8, 1822.

[15] 3 S., c. 60, s. 2, p. 783. March 3, 1823.

[16] *Ind. Sch. Rep.*, 1885–'86, pt. II, 9. [17] Knight, *Land Grants*, 66.

[18] *Amer. State Papers, Pub. Lands*, IV, 957.

"in the apportionment of the proceeds of said fund, each township and district aforesaid shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sales of school lands belonging to such township or district."[19]

The General Assembly forestalled this congressional enactment by an act of January, 1828, empowering the inhabitants of the congressional townships to sell their school lands, and to loan the proceeds for the use of schools.[20] An act of the Legislature, in 1833, authorized the inhabitants of each congressional township to determine by vote whether the moneys arising from the sales of school lands should be deposited in the State loan office or be loaned to citizens of the county.[21] This was further supplemented by an act of 1838, which constituted each congressional township a corporation for the independent management of its school fund by its county school commissioner. Three years later, the counties were declared to be individually responsible for the preservation of their respective congressional township funds. Definite provisions were inserted in the Constitution of 1851 for the safe-guarding of the various school funds, and for the consolidation of the congressional township fund with the other school funds to form a State common school fund.[22] An attempt to carry out this consolidation was defeated in the Supreme Court of the State.[23] And consequently, an act of 1855 restored the congressional townships to their former autonomy with reference to the administration of their respective sixteenth section funds, a condition which obtains to the present day.

Returning to congressional legislation, we may call attention to three minor enactments concerning the school lands in

[19] 4 S., c. 91, p. 299. May. 24, 1828.

[20] *Ind. Sch. Rep.*, 1885–86, 10.

[21] *Ind. Sch, Rep.*, 1895–96, 273.

[22] *Constitution*, 1851, Art. VIII, secs. 2, 3.

[23] Knight, *Land Grants*, 72.

Indiana, passed during the period from 1836 to 1859. An entire township in Monroe county had been selected by the authorities for the benefit of the State University. Therefore, in 1836 (June 23) Congress authorized the selection of other school lands for the benefit of the schools within that township in lieu of the sixteenth section thus taken.[24] An act of 1842 (August 11) directed the selection of lieu school lands for the benefit of the reserved university township in Gibson county.[25] Finally, in 1859 (March 3), a deficit was supplied in the quantity of school lands due the inhabitants of a certain township in Wabash county.[26]

The total acreage of school lands thus granted by Congress is variously estimated. Donaldson's "Public Domain" indicates a grant of 650,317 acres,[27] while the General Land Office tables for 1896 indicate a grant of 601,049 acres.[28] At the present time the unsold portions of this grant are entrusted to the care of the trustees of the civil townships in which the same may be located,[29] while the proceeds of the sales of these lands are managed by the respective county auditors,[30] who may loan such moneys at six per cent. and in amounts not exceeding $2,000, upon mortgages secured by real estate.[31] The Congressional Township School Fund, in 1896, amounted to $2,503,998.73, with 1,159 acres remaining unsold.[32] It is of interest, moreover, to note that out of a total revenue of $6,577,270.93, raised for the support of schools in 1896, the congressional revenue contributed $154,817.02.[33]

University Land Grant

The act of Congress of March 26, 1804, establishing a land office at Vincennes in the Indiana Territory, reserved from

[24] 6 S., c. 131, p. 641. [25] 6 S., c. 136, p. 851.
[26] 11 S., c. 86, p. 438. [27] Donaldson, 228. [28] *Opus cit.*, 4.
[29] *School Laws*, 1897, sec. 252. [30] *Ibid.*, sec. 251.
[31] *Ibid.*, secs. 296, 298. [32] *Ind. Sch. Rep.*, 1895–96, 291.
[33] *Ibid.*, 320.

sale "an entire township * * to be located by the Secretary of the Treasury, for the use of a seminary of learning."[34] Two years later, a township in Gibson Co. was reserved for this purpose, and during the session of 1806 the General Assembly incorporated the Vincennes University.[35] In 1807, the trustees of the university were authorized to sell 4,000 acres of the seminary township, and to rent the remainder.[36] It may be remarked, parenthetically, that the titles to the lands thus sold by the trustees were confirmed to the purchasers by Congress on April 27, 1816.[37] From the proceeds of the sales a building was erected, and the institution opened for work in 1810.

The Indiana enabling act of April 19, 1816, provided for the reservation of an additional township for the use of a seminary of learning, the title being vested in the Legislature of the State.[38] A State Constitution of the same year provided for the safe-keeping of the seminary fund, and for "a general system of education ascending in regular gradation from township schools to a State university."[39] During this year the Legislature provided for the appointment of superintendents of the seminary township.[40]

In the meantime, the State capital having been moved from Vincennes, interest in the university at the latter place waned. In 1820, a "State Seminary" was established at Bloomington, to which was granted the second seminary township. Two years later, the State abandoned the Vincennes University entirely, and granted the remaining endowment lands of this institution to the State Seminary at Bloomington.[41]

An act was passed by the State Legislature in 1827, providing for the sale of these seminary lands, and authorizing the payment of the proceeds into the State treasury. These proceeds were directed to be loaned in small amounts on real

[34] 2 S., c. 35, s. 5, p. 279. [35] Woodburn, 30. [36] *Ibid.*, 33.
[37] 6 S., c. 118, p. 171. [38] 3 S., c. 57, s. 6, p. 290.
[39] *Constitution*, 1816, Art. IX, Secs. 1, 2.
[40] *Ind. Sch. Rep.*, 1885–86, Pt. II, 8. [41] *Ibid.*, 9.

estate, at six per cent.[42] During the following year, the State Seminary was reorganized as the Indiana College, to which institution was granted the congressional endowment, less the 4,166 acres that had been sold by the Vincennes University. Ten years later, in 1838, the present Indiana University was organized on the foundations of the Indiana College.[43]

During this time, the Vincennes University had undergone a precarious existence, having had its endowment wrested away by the State, and enjoying no legal status for some years previous to 1838, when the old board of trustees was revived by act of the State Legislature. Before long, measures were undertaken by the trustees to recover the seminary land originally granted to the institution in 1807. The case passed through the various courts, and in December, 1852, was finally adjudicated in the Supreme Court of the United States in favor of the Vincennes trustees.[44] (While this case was in the hands of the Court, Congress passed an act supplying to the State, for the use of the State University, the deficiency of 4,166 acres in the first seminary township, which had been sold by the trustees of the Vincennes University.[45]) To the Vincennes University there thus accrued, by this Supreme Court decision, deducting fees, a fund of $41,585.[46]

The Indiana University was now confronted by the loss of about one-half of its endowment fund. But on petition of the State Legislature, Congress, in 1854, indemnified the State for the loss of title to this township of land, by authorizing the Governor to select 19,040 acres for the use of the University.[47]

In addition to the grants for higher education already mentioned, Congress made two specific donations to the Vincennes University. An act of April 20, 1818, appropriated to the trustees of the Vincennes University, for the use of the institution, the residue of any moneys arising from the sales of cer-

[42] Knight, *Land Grants*, 127. [43] Woodburn, 81. [44] *Ibid.*, 34.
[45] 10 S., c. 58, p. 14. [46] Knight, *Land Grants*, 129.
[47] 10 S., c. 12, p. 267. Feb. 23, 1854.

tain lands which were authorized to be used primarily for the purpose of draining a pond in the vicinity of the town of Vincennes.[48] In 1873, several thousand acres of vacant and abandoned lands in Knox Co. were granted to this University for its use.[49]

Thus, it will be perceived, Indiana received, in all, a township of 23,040 acres, a grant of 19,040 acres, and an indemnity of 4,166 acres for the use of the Indiana University, its State institution for higher education; while in behalf of the Vincennes University, a whilom State institution, there was received a total of 23,040 acres. From these sources there had accrued a total of $134.353.68 to the credit of the "College Fund" in 1895,[50] in behalf of the State University, upon which an interest of $8,039, derived from loans, was paid in 1897.[51] Since 1883, the State has levied an annual one-half per cent. State tax, the moneys thus derived being placed to the credit of the "Permanent Endowment Fund of Indiana University."[52] This State fund amounted to $397,702.31 in 1895. By an act of March 8, 1895, a further annual State one-fifteenth-mill tax accrues to the University for maintenance purposes.[53]

Concerning the present status of the Vincennes University Fund derived from the congressional grant, no definite information has been secured. It is probable that the sum total received, including the 4,166 acres sold in the early part of the century, and deducting the $25,000 expended in litigation with the State, amounted to about $45,000.

Saline Lands Grant

The act of Congress of March 26, 1804, establishing the Vincennes land district in the Indiana Territory, reserved from sale the salt springs and the lands reserved for the use of the

[48] 3 S., c. 128, s. 2, p. 468. April 20, 1818.

[49] 17 S., c. 297, p. 614. March 3, 1873.

[50] *Report State Auditor*, 1895, 50.

[51] *Report State Treas.*, 1897, 36.

[52] *School Laws*, 1897, Sec. 355.

[53] *Ibid.*, Sec. 493.

same.[54] In the enabling act for the admission of the Territory as a State, all the salt spring lands, not exceeding thirty-six sections, were granted to the State for use of the people, "to be used under such terms, conditions and regulations as the Legislature * * shall direct."[55]

A resolution of the State Legislature was presented to Congress in 1827, praying for permission to sell all the salines granted by Congress, for the purposes of common school education.[56] Congress acceded to this request in the act of 1832, authorizing the Legislature to sell certain described lands amounting to over thirty-seven and one-half sections.[57] The next year, the Legislature ordered the lands to be sold, and later definitely appropriated the income "to the use of common schools."[58] Until 1844, the proceeds were loaned on mortgages by the State Treasurer. During the same year the General Assembly added to the common school fund all the moneys derived from the saline reservations.[59] In 1845 the funds were distributed among the counties, to be loaned by them in the same manner as were the other educational funds.[60]

The Constitution of 1851 declared the "saline-fund, and the lands belonging thereto," a portion of the common school fund.[61] During the following year Congress repealed so much of the act of 1832 as limited the price at which the saline lands might be sold.[62] By 1873, all the lands had been sold, and the proceeds accruing since 1854 have been consolidated with the other school funds. These proceeds have been borrowed by

[54] 2 S., c. 35, s. 5, p. 279.

[55] 3 S., c. 57, s. 6, p. 290. April 19, 1816.

[56] *Amer. State Papers, Pub. Lands*, IV, 890.

[57] 4 S., c. 155, p. 558. July 3, 1832.

[58] Knight, *Land Grants*, 73.

[59] *Ibid.*, 12.

[60] *Ind. Sch. Rep.*, 1885–86, 278.

[61] *Constitution*, 1851, Art. VIII, Sec. 2.

[62] 10 S., c. 61, p. 15. July 12, 1852.

the State, which issued six per cent. bonds to the credit of the fund.[63]

The area of this grant amounts to 23,829.5 acres.[64] The most recent statistics available indicate that these lands have been sold for about $85,000, which are now bearing eight per cent. interest.

Surplus Revenue of 1836

From this Government grant Indiana received $860,254.44. In February, 1837, the General Assembly directed one-half to be distributed to the various counties on the basis of the adult male population, to be loaned to individuals at eight per cent. interest, the income to be used by the counties for the support of schools therein.[65] In 1843 the amount thus distributed was by law denominated the "Surplus Revenue Fund," and made a permanent school fund.[66] The reservation thus made for the common school fund was incorporated in the Constitution of 1851,[67] and in the various revisions of the school laws thereafter made. Thus, the school law of 1865 denominates the fund "heretofore known and designated as the Surplus Revenue Fund," a part of the "Common School Fund."[68][69]

Swamp Lands Grant

The Constitution of 1851 provided that "the proceeds of the sales of the swamp-lands granted to the State of Indiana

[63] Knight, *Land Grants*, 74.

[64] *Ind. Sch. Rep.*, 1895–96, 278.

[65] Bourne, 61–65.

[66] *Ind. Sch. Rep.*, 1885–86, Pt. II, 12.

[67] *Constitution*, 1851, Art. VIII, Sec. 2.

[68] *School Laws*, 1897, Sec. 251.

[69] The *Indiana School Report*, 1865–66, p. 68, indicates that the act of February, 1837, provided that $573,502.96 of this money should become a school fund, which is one-half of the whole sum expected on the basis of four Government payments; but it will be recalled that only three payments of the Surplus Revenue were made. See "Surplus Revenue," ch. IV, of this book.

by the Act of Congress of September 28, 1850, after deducting the expense of selecting and draining the same," should constitute a portion of the common school fund of the State.[70]

Up to December 1895, the General Land office had received claims amounting to 1,377,727.7 acres. In the early days the money was apparently squandered, and much was thus lost to the school fund. In 1885, Knight indicated the proceeds for education at $38,077.59.[71] Later statistics have not been available.

Agricultural and Mechanical College Grant

Indiana accepted the Government grant of 1862 endowing agricultural and mechanical colleges in the various States of the Union, in an act of March 6, 1865, providing for the investment and management of the endowment.[72] A body corporate was created under the name of " The Trustees of the Indiana Agricultural College,"[73] who disposed of the 390,000 acres in scrip for $212,238.50.[74] Not until 1869 was an institution definitely organized. In that year the State accepted a donation of $150,000 from John Purdue for the use of an agricultural college, and in recognition of this and other donations, named the institution Purdue University with a location in Tippecanoe County. The university was not opened within the time limit set by Congress, so that Congress passed an act on December 13, 1872, extending the time limit two years longer in which Indiana might locate a college in conformity with the act of 1862.[75] In 1874, the institution was formally opened at La Fayette.

Meanwhile, the original fund had, by interest accumulations, increased to $340,000. At the present time this endowment

[70] *Constitution*, 1851, Art. VIII, Sec. 2.

[71] Knight, *Land Grants*, 171.

[72] *School Laws*, 1897, Sec. 470.

[73] *Ibid.*, Sec. 471.

[74] Knight, *Land Grants*, 152.

[75] 17 S., c. 2, s. 2, p. 397.

fund is invested in a non-negotiable bond of the State, due in 1901, paying five per cent interest.[76] By an act of March 8, 1895, the State made provisions for the levy of a one-twentieth mill State tax for the benefit of the university.[77]

Agricultural Experiment Stations Act of 1887

The grant of $15,000 yearly for the establishment of agricultural experiment stations in the various States has been always appropriated by the State to the Purdue University agricultural experiment station established in 1879.

Government Endowment of 1890

The moneys arising from this grant were authorized by act of Legislature, 1891, to be applied to the uses of Purdue University.[78]

[76] *School Laws*, 1897, Sec. 487.

[77] *Ibid.*, Sec. 493.

[78] *School Laws*, 1897, Sec. 492.

CHAPTER VIII

MISSISSIPPI

AMONG the lands ceded by Georgia to the General Government in 1802, was included the major portion of the present State of Mississippi. An act of Congress of 1798, authorizing the establishment of a government in the Mississippi Territory, provided that the inhabitants thereof should be entitled to all the rights, privileges and advantages granted by the Ordinance of 1787.[1]

Sixteenth Section Grant

During the territorial period, various acts were passed by Congress concerning these school lands. The acts of March 3, 1803, providing for the disposal of the lands of the United States south of the State of Tennessee,[2] of March 31, 1808, subjecting to sale the lands acquired by the treaty with the Choctaws at Mount Dexter, in 1805,[3] of June 15, 1809, providing for the sale of the lands ceded by the Cherokees and Chickasaws,[4] of March 3, 1815, relative to the lands acquired by treaty with the Creek Indians,[5] and of March 3, 1817, authorizing the sale of public lands within the land district of Madison,[6] all excepted from sale the section number sixteen which was authorized to be "reserved in each township for the support of schools within the same." An act of April 21, 1806, provided for the selection, by the Secretary of the Treas-

[1] 1 S., c. 28, s. 6, p. 549. April 7, 1798.
[2] 2 S., c. 27, s. 12, p. 233.
[3] 2 S., c. 40, s. 5, p. 480.
[4] 2 S., c. 4, p. 548.
[5] 3 S., c. 88, s. 5, p. 229.
[6] 3 S., c. 62, s. 3, p. 375.

ury, of other lands for schools wherever the section sixteen might be occupied by virtue of previous grants.[7]

On January 9, 1815, Congress provided for the leasing of the school lands of the Territory. The County Courts in each county were authorized to appoint not more than five agents, who were empowered to lease the sections reserved for schools.[8]

On March 1, 1817, Congress passed an act to enable the people of the western part of the Mississippi Territory to form a constitution,[9] and on the following December 10th formally admitted the State and extended to it the privileges of the Ordinance of 1787.[10] The Constitution of 1817 thus formed, provided for the encouragement of schools by the State,[11] and for the passage of laws to preserve the lands donated by Congress, and to apply them conformably to the grants of Congress.[12]

During the following year (February 5, 1818), the State Legislature enacted a law concerning the school lands.[13] The justices of the county courts were authorized to take charge of the school lands within their respective counties, to lease them for a period not exceeding three years, and to dispose of the moneys arising therefrom for school purposes. An act of January 9, 1825, provided for the election of five trustees within the several townships, to whom was entrusted the care of the school lands. They were empowered to lease the same for a period not exceeding five years, and to apply the moneys thus accruing for school buildings and teachers' salaries.[14] An interesting law of February 27, 1833, reminds one of the Ohio policy of long-term leases.[15] This law authorized the township trustees, whenever a majority of the resident heads of families might so request, to lease the school section to the highest bidders for a term of ninety-nine years. The funds

[7] 2 S., c. 46, s. 6, p. 401.
[8] 3 S., c. 20, p. 163.
[9] 3 S., c. 23, p. 348.
[10] 3 S., *Resolution* 1, p. 472.
[11] *Constitution*, 1817, Art. VI, Sec. 16.
[12] *Ibid.*, Sec. 20.
[13] Hutchinson, 205.
[14] *Ibid.*, 210.
[15] *Ibid.*, 213.

thus accruing were then directed to be invested in stock of the Planters' Bank of Mississippi, the dividends of which were to be used for educational purposes within the respective townships. Evidently the banking craze of this period poured much worthless money into the hands of the trustees; for in 1841 they were authorized to auction off to the highest bidder, and for cash, all the depreciated bank paper in their possession and belonging to the school sections.[16] In the following year the trustees were empowered to compromise for or rescind all sales, leases, or other contracts made concerning the sixteenth section lands.[17]

Some years previously, in 1836, Congress had passed an act reserving from sale a quantity of land equal to one-thirty-sixth part of the lands ceded by the Chickasaws by the treaty of 1832, and authorizing the selection of such lands for the use of schools by the Secretary of the Treasury.[18] By an act of June 13, 1843, so much of this law was changed as to vest the power of selecting the lands in the Governor of the State.[19] Two years later (February 13, 1844), the State Legislature provided for the proper selection of these lands;[20] and in 1848 the Secretary of State was directed to lease the Chickasaw school lands for a term of ninety-nine years,[21] renewable forever.[22]

The moneys were directed to be paid to the State, which should hold them in trust for the use of schools in the Chickasaw cession.[23] Under certain conditions the lands were authorized to be sold.

[16] Hutchinson, 221. [17] *Ibid.*, 222.

[18] 5 S., c. 355, s. 2, p. 116. July 4, 1836.

[19] 5 S., c. 40, p. 490. [20] Hutchinson, 228.

[21] Hutchinson, 223.

[22] Similar long-term leases are provided for by later acts. *Cf.* Hutchinson, 239, Sec. 6.

[23] A report of the Secretary of State in 1851 indicated that the schools in the Chickasaw cession were entitled to 1745,55 acres.—*Miss. Sch. Rep.*, 1889–91, 19.

The act of 1846 providing for the establishment of a system of common schools in the State, directed all the funds and bonds arising from the lease and sale of the sixteenth sections to be delivered to the custody of the respective county treasurers, while the county boards of five school commissioners were entrusted with the care and management of the school lands. But in case the majority of the heads of families in any township protested against this arrangement, then the law provided that the old boards of trustees should continue to control and manage the sixteenth section school fund of such township.[24]

In addition to the acts already mentioned, Congress passed a series of laws between the years 1817 and 1850, either reserving the sixteenth section from sale in newly formed land districts, or authorizing the selection of other lands in lieu of school lands previously disposed of. The former species of legislation characterized the act of May 6, 1822, relating to the tract of land ceded by the Choctaws in 1820, and to the tract of land lying east of the Tombigbee river.[25] (An act of April 22, 1826, reserved the sixteenth sections in general from preemption.[26]) The latter species of legislation characterized the acts of January 13, 1831, relating to Lawrence County,[27] of January 28, 1833,[28] of July 2, 1836,[29] of February 3, 1837,[30] and of March 2, 1849,[31] the last four relating to certain specific townships.

It will be recalled that none of the congressional acts empowered the state of Mississippi to sell the school lands. An act of Congress of May 19, 1852, authorized the Legislature of the State to sell the school lands and to invest the proceeds thereof in such a manner as the Legislature might direct "for the use and support of schools within the several townships

[24] Hutchinson, 230, 243.

[25] 3 S., c. 55, secs. 2, 3, p. 680.

[26] 4 S., c. 28, s. 5, p. 155.

[27] 6 S., c. 4, p. 451.

[28] 6 S., c. 8, p. 529.

[29] 6 S., c. 313, p. 673.

[30] 6 S., c. 10, p. 685.

[31] 9 S., c. 85, p. 120.

and districts of country for which they were originally reserved * * and for no other use or purpose whatever." The assent of the inhabitants of any township was made a necessary condition for the sale of the school lands of such township. Similar provisions were enacted regarding the lease of the school lands.[32] The general provisions of this act were later extended[33] to the Choctaw school lands (March 3, 1857).

The Constitution of 1868 provided for a board of education, consisting of the secretary of State, the attorney-general, and the superintendent of public instruction, whose duties embraced the management and investment of the school funds;[34] and the funds arising from the consolidation of the congressional township funds were directed to be invested in United States bonds.[35]

According to the provisions of an act of May 15, 1871, the board of six school directors of each county was empowered to sell or lease the school lands of any township within the county, with the consent of the inhabitants of such township;[36] and all moneys arising from the sixteenth sections were directed to be invested by the county boards of school directors in either bonds of the State of Mississippi or bonds of the United States.[37]

The present Constitution of 1890 provides for a State board of education, similarly constituted and endowed with the same powers as provided for in 1868.[38] Furthermore, the State Legislature is directed to enact such laws as may be necessary to ascertain the true condition of the sixteenth section funds in the Choctaw district, and to provide that the school lands shall not be sold, nor that they shall be leased for a term exceeding twenty-five years.[39] Moreover, the Chickasaw school funds are declared a trust upon which the State is pledged to pay

[32] 10 S., c. 35, p. 6. [33] 11 S., c. 104, s. 2, p. 200.
[34] *Constitution*, 1868, Art. VIII, Sec. 3. [35] *Ibid.*, Sec. 6.
[36] *Code*, 1871, Sec. 2015. [37] *Ibid.*, Sec. 2055.
[38] *Constitution*, 1890, Art. VIII, Sec. 204. [39] *Ibid.*, Sec. 211.

six per cent. interest per annum.[40] According to the Code of 1892, the several counties, through their respective boards of supervisors and under the general supervision of the State land commissioner, have jurisdiction and control over the school lands.[41]

As has been previously indicated, the State borrowed the proceeds of the sales of the Chickasaw school lands, and for years previous to 1871 paid interest to the Chickasaw counties at the rate of eight per cent. on the $815,227 thus borrowed.[42] In many instances the interest paid to the counties was by them used for county purposes.[43] In this Chickasaw cession the State received 163,825 acres from Congress, of which, in 1895, the State still held 30,000 acres.[44] The fund accruing from this cession amounted in that year to $854,583, upon which the State was paying interest at six per cent., amounting to $51,055, and apportioned among the counties *on the basis of the area of such counties.*[45] In the Choctaw counties the State received from the General Government a total of 661,000 acres, of which, in 1893, 67,764 acres were unsold. In 1895, this endowment was represented by a permanent fund of $197,421, known as the township fund, and produced in interest and rents a total income of $26,890.[46]

The State of Mississippi thus received a total of 824, 825 acres of public lands for the support of common schools, of which, in 1895, about 95,000 acres remained unsold. The permanent fund thus accruing amounted to $1,052,004, and the income from interests and rents amounted to $77,945. This source of revenue constituted 5.5 per cent. of the total school revenue raised in the State.[47]

[40] *Ibid.*, 212.

[41] *Code*, 1892, Sec. 4150.

[42] *Miss. Sch. Rep.*, 1871, 26.

[43] *Ibid.*

[44] *Miss. Sch. Rep.*, 1893–95, 31.

[45] *Miss. Sch. Rep.*, 1893–95, 31. This is the only instance of such a peculiar method of distributing school moneys accruing from the congressional grants, at least, that is known to the writer.

[46] *Miss. Sch. Rep.*, 1893–95, 17.

[47] *Ibid.*, 24.

It is of interest to note that the act of Congress of February 23, 1870, admitting the State of Mississippi to representation in the Congress of the United States, specifically provided that "the Constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of school rights and privileges secured by the Constitution of said State."—16 S, c. 19, s, 1, p, 68.

University Land Grant

During the territorial period of Mississippi, Congress authorized the Secretary of the Treasury to locate an entire township of land within the Territory for the use of a seminary of learning therein.[48] This act was repealed by an act of February 20, 1819, which directed, however, that a township of land be located by the Secretary of the Treasury, and be vested in the Legislature of the State in trust for the use of a seminary of learning.[49]

An act of the State Legislature of January 29, 1825, required the auditor of State to lease the unimproved seminary lands for a term of four years;[50] while an act of two years later (February 7, 1827) authorized him to lease any of the seminary lands for the same period.[51] Up to 1831, $8,402 had been received from this source.[52] On March 2, 1833, the Governor was directed to appoint three commissioners to estimate the value of the seminary lands; and the auditor was required to sell such lands at a price not less than three-fourths of the appraised valuation. All moneys accruing from the sales were directed to be invested in stock of the Planters' Bank of Mississippi.[53] The lands were, evidently, rapidly sold; for in 1835 the seminary fund amounted to $277,283, and in 1839 it had increased to $314,146.[54] An act of February, 1840, providing for the

[48] 3 S., c. 88, s. 5, p. 229. March 3, 1815.
[49] 3 S., c. 31, s. 2, p. 485.
[50] Hutchinson, 211.
[51] *Ibid.*, 212.
[52] *Catalog Univ. of Miss.*, 1887, 163.
[53] Hutchinson, 215.
[54] *Catalog Univ. of Miss.*, 1887, 160.

location of the State university, directed that all sums of money accruing to the seminary fund should be appropriated for the use and benefit of such university.[55] By 1841 this fund amounted to $322,146, of which $168,518 remained uncollected.

Definite provisions for the investment and collection of the seminary fund were again made in an act of July 26, 1843, which authorized the Governor to appoint a commissioner of the seminary fund, who should possess full power to collect unpaid moneys, and turn the seminary funds into the State treasury.[56] This act directed the State treasurer to credit the fund with interest at five per cent. upon all moneys paid into the treasury prior to July 26, 1843, and it further directed that thereafter the State should pay interest at the rate of eight per cent. upon this fund. During the following year (February 24, 1844) the Legislature passed an act to incorporate the University of Mississippi,[57] which was formally opened for work in November, 1848.

In 1844 the Planters' Bank went into liquidation, and in that liquidation the seminary trust fund, for which the State was responsible, was absorbed. For many years the question of the State's indebtedness to the university remained a matter of sharp controversy. Interest on the fund, as required by the act of 1843, was not paid, but small appropriations were substituted in its place.[58] In 1856 Governor McRae, computing the interest on the basis of that act, held the State's total net indebtedness to the entire university fund to be $1,077,790.[59]

The first amendment to the Constitution of 1868, passed in 1876, prohibited the State from paying any of the bonds issued by it to the credit of the university fund when that fund was used up in the purchase of stock of the old Planters' Bank.[60] But such a repudiatory policy was repealed by an act of 1880

[55] Hutchinson, 221.
[56] *Ibid.*, 223.
[57] Hutchinson, 227.
[58] *Catalog Univ. of Miss.*, 1887, 170.
[59] *Ibid.*, 165.
[60] *Ibid.*, 167.

which declared the State's indebtedness to the university to be $544,061.33. Upon this sum the State was pledged to pay six per cent. interest annually; and accordingly, the sum of $32,643 interest was directed to be appropriated to the State University in 1880, and annually thereafter.[61]

The State had in reality obtained two townships of land for higher education, the earlier grant being for Jefferson College (q. v.), and the other furnishing the endowment fund for the university. But the State never regarded the Jefferson College grant as one made in behalf of the State. Consequently, Congress was memorialized to grant the State an extra townshtp of land for the use of the State University. On June 20, 1894, Congress granted this petition, and authorized the selection of 23,040 acres within the State, to supply the deficiency in the grant to the university.[62]

Grant to Jefferson College

Five years after the establishment of a Territorial government in Mississippi, Congress directed that there should be reserved from sale thirty-six sections of public lands, to be located in one tract by the Secretary of the Treasury for the use of Jefferson College, and also certain town lots, in the city of Natchez, and an outlot not exceeding thirty acres, to be located by the Territorial Governor for the use of the college.[63] The latter part of this act relating to the town lots and out-lots was temporarily repealed in 1804.[64] The college lands were evidently not readily selected; for an act of Congress of February 20, 1812, authorized the Secretary of the Treasury to locate the thirty-six sections of land as indicated in the act of 1803.[65] Finally, in 1832, an act for the relief of Jefferson College

[61] *Catalog Univ. of Miss.*, 1887, 168.

[62] 28 S., c. 110, p. 94.

[63] 2 S., c. 27, s. 12, p. 229, March 3, 1803.

[64] 2 S., c. 61, s. 11, p. 305, March 27, 1804.

[65] 2 S., c. 24, p. 679.

authorized the trustees to surrender certain lands located for the college, and to select other lands in lieu thereof, which lands might be sold or leased at the discretion of the trustees.[66]

It will be observed that none of the congressional acts relative to Jefferson College vest the title to the college lands in the Territory or in the State; but rather, they vest such title in the college, which was a private institution founded by act of the Territorial Legislature of May 13, 1802. Concerning the history of the funds of this institution no information has been obtainable.

Five Per Cent. Fund

The Mississippi enabling act of March 1, 1817, provided for the usual reservation of five per cent. of the net proceeds of public land sales within the State for improvement purposes.[67] The same provision was made regarding the public land sales in the Chickasaw cession.[68] On March 9, 1882, and March 15, 1884, the Legislature directed all the moneys thereafter arising from this source to be devoted to school purposes.[69] Accordingly, in 1888, $78,429.50 were distributed to the various counties for school purposes.[70] Since the latter date, $4,072.20[71] have been added to this fund, making a total of $82,501.70 for the benefit of education arising from the five per cent. of public land sales.

Distribution Act of 1841

The 500,000 acres granted to the State for purposes of internal improvement continued to be so used by the State up to the time of the Civil War. With the formation of the Con-

[66] 6 S., c. 73, p. 484, April 20, 1832.

[67] 2 S., c. 23, s. 5, p. 34.

[68] 5 S., c. 355, s. 1, p. 116, July 4, 1836.

[69] *Miss. Sch. Rep.*, 1887–89, 8.

[70] *Biennial Rep. Auditor Pub. Accounts*, 1888–89, vi.

[71] Compiled from *State Auditors' Reports*, 1888–97.

stitution of 1868 the remnant of these lands was devoted to new uses. This Constitution provided that the proceeds of the lands "belonging to the State, heretofore granted by the United States," should form a part of the common school fund.[73] The writer has been unable to secure any important information concerning this source of school revenue. A few years ago only 21,000[74] acres of this endowment remained, probably the only portion of the 500,000 acres which will accrue for school purposes.

Swamp Lands Grant

This grant was appropriated by the State to the purposes mentioned in the Government act of cession up to the time of the Civil War. The report of the secretary of State made in 1859, shows that 245,965 acres of this land remained undisposed of at that date.[75] The Constitution of 1868 applied the proceeds of the swamp lands, with a few exceptions, towards the establishment of a common school fund.[75] This diversion of the grant is not mentioned either in the Constitution of 1890, or in the School Laws of 1896. Inquiry by the writer has failed to secure a statement of the financial condition of this appropriation for schools.

The Agricnltural and Mechanical College Grant

The General Land Office was preparing, during 1867, to issue the 210,000 acres in scrip to which Mississippi was entitled before the reconstruction policy of Congress had been completed, in consequence of which Congress prohibited such issue until Mississippi should have been fully restored to her rights as a State.[76] The Constitution of 1868 provided for the

[73] *Constitution*, 1868, Art. VIII, sec. 6.

[74] *Miss. Sch. Rep.*, 1889–91, 20.

[75] *Miss. Sch. Rep.*, 1888–91, 19.

[75] *Constitution*, 1868, Art. VIII., sec. 6.

[76] 15 S., *Res.* 23, p. 25, March 19, 1867.

establishment of an agricultural college or colleges, to the support of which the proceeds of the land scrip donated by Congress were directed to be applied.[77] Later, land scrip representing a total of 207,920 acres was received, and eventually sold for $188,298.[78]

At first the moneys received from the sale of scrip were directed to be used for the construction of the Vicksburg and and Nashville Railroad;[79] but this manner of investing the proceeds was repealed in 1876. Between 1875 and 1878, one-half of the interest on the agricultural college fund was granted to the State University.[80] By 1878 this fund had increased, by interest accumulations, to $227,150, which then were equally divided between the Mississippi Agricultural and Mechanical College at Starkville, and the Alcorn Agricultural and Mechanical College (colored). The former institution appropriated $15,000 of its endowment fund for the purchase of lands, thus leaving a permanent fund of $98,575[81] for its use. The endowment fund of the latter institution has remained intact. At the present time both these funds are covered in the State treasury, and are represented by thirty-two year bonds running from 1896 to 1928, bearing six per cent. interest per annum.[82]

Additional Grant to the Agricultural Colleges

By an act of Congress of February 20, 1895, an additional amount of 46,080 acres was granted the State for the equal use of the two agricultural and mechanical colleges.[83] The laws of the State authorize the respective Boards of Trustees of each institution either to sell the lands for cash, or to lease them for a period not exceeding thirty years. All moneys

[77] *Constitution*, 1868, Art. VIII., sec. 8.

[78] *Miss. A. and M. College Catalogue*, 1896–97, 52.

[79] *Laws of* 1873, 516. [80] *Blackmar*, 270.

[81] *Miss. A. and M. College Catalog*, 1896–97, 52.

[82] *Ibid.*, 52. [83] 28 S., c. 106, p. 673.

thus accruing must be paid into the State treasury, where they are credited to the respective colleges, in accordance with Section 212, Article VIII. of the Constitution of 1890, which provides that the State shall annually pay six per cent. interest per annum on such trust funds.

The Mississippi Agricultural and Mechanical College has sold 120 acres of its grant for $480,[84] while none of the grant to the Alcorn Agricultural and Mechanical College has been sold.[85] The information sent the writer would indicate that none of these lands have been leased.

Agricultural Experiment Stations Act of 1887

The annual appropriation from the Government for agricultural experiment station purposes, has been granted by the State for the benefit of the experiment station in connection with the Mississippi Agricultural and Mechanical College.

Government Endowment of 1890

This Government appropriation has been distributed between the two State agricultural colleges. Out of the first two appropriations both institutions received equal shares; but the Secretary of the Interior, who under the law has power to construe the Congressional act, refused to distribute the amount due Mississippi for the year 1892 unless the appropriation was divided between the institutions on the basis of the number of educable children of the respective races.[86] The reports of the State treasurer indicate that this principle of division has become established.

Miscellaneous Acts

An act of Congress of August 15, 1876, confirmed the sale of the marine hospital building and grounds at Natchez, provided they should be used for the education of colored persons.[87]

[84] Letter from R. C. King, Sec'y Miss. A. and M. College, March, 1899.

[85] Letter from E. H. Triplett, Pres. Alcorn A. and M. College, March, 1899.

[86] *Miss. Sch. Rep.*, 1889–91, 432.

[87] 10 S., c. 294, p. 202.

An act of May 13, 1884, released the American Baptist Home Missionary Society from the conditions of sale imposed by the above act of 1876, and gave permission to the society to sell the buildings and grounds at Natchez, and to devote the proceeds to the construction of a school building at Jackson, Miss., for the education of colored persons.[88]

By an act[89] of March 2, 1895, Congress granted a township of land to the State of Mississippi for the use of the Industrial Institute and College for Girls. The act furthermore provided that the proceeds of the land should forever remain a fund for the use of said institute.[90]

[88] 23 S., c. 45, p. 21. [89] 28 S., c. 184, p. 815.

[90] Inquiry has failed to elicit information concerning the present status of this fund.

CHAPTER IX

ILLINOIS

PRIOR to the year 1809 Illinois formed the western portion of Indiana Territory, wherefore between 1800 and 1809, its history is a part of the history of Indiana Territory, and, previous to 1800, a part of the Northwest Territory. Hence to the Illinois Territory the Ordinances of 1785 and 1787 were directly applicable.

Sixteenth Section Grant

As early as June 20, 1788, the Board of Treasury was authorized to contract for the grant of certain lands in the Illinois country along the Mississippi, among the conditions of sale being the stipulation that the lot No. 16 in each township, or fractional township, should be given perpetually for the use of schools.[1] The act of Congress of 1804, establishing the land office of Kaskaskia, in the western part of Indiana Territory, reserved from sale, in the district thus formed, "the section 'number sixteen' * * * in each township, for the support of schools within the same."[2] In the enactment creating the Illinois Territory, Congress specifically stipulated that the inhabitants of the new Territory should enjoy the rights, privileges and advantages secured by the Ordinance of 1787.[3] During the territorial period, four minor acts were passed by Congress, reserving the sixteenth sections either from sale or from pre-emption.[4]

[1] *Public Lands, Laws*, c. 27. [2] 2 S., c. 45, s. 5, p. 279. March 26, 1804.

[3] 2 S., c. 13, s. 2, p. 515. Feb. 3, 1809.

[4] 2 S., c. 29, s. 2, p. 684, Feb. 21, 1812; 2 S., c. 77, s. 1, p. 728, May 6, 1812; 3 S., c. 63, s. 3, p. 218, Feb. 27, 1815; 3 S., c. 164, p. 332, April 29, 1816.

The sixteenth section thus reserved in each township for the use of common schools, was in the "act to enable the people of the Illinois Territory to form a Constitution and State Government," "granted to the State, for the use of the inhabitants of such township, for the use of schools."[5] The convention which met pursuant to this act did not incorporate any educational provisions into the Constitution then formed; but, on August 26, 1818,[6] formally accepted the propositions of Congress concerning the grants for education. During the following year, the first General Assembly passed a law providing for the leasing of the school lands under the supervision of the county commissioners, for a period not exceeding ten years "on the best terms to be made."[7] It will be noted that the congressional grants did not indicate the manner in which the lands for schools were to be used. Various States had petitioned Congress for permission to sell their school lands, and had been accordingly empowered so to dispose of the grant. But the Illinois General Assembly, without awaiting the assent of Congress, passed a law on February 15, 1831, authorizing the appointment of commissioners to sell the school sections immediately, at not less than $1.25 an acre, on the petition of three-fourths of the legal resident voters within the respective townships.[8] Various legislative acts concerning this subject were passed during the years following, and finally in 1841 a law concerning the sales of the sixteenth sections was passed, substantially the same as the law now in force.[9]

During these years, the school lands were being sold by the State without the consent of Congress. The first consent to any of the sales was given by Congress in 1842, with reference to a certain township in the State.[10] In 1844 Congress confirmed the previous sales of school lands, and authorized the

[5] 3 S., c. 67, s. 6, p. 430. April 18, 1818.
[6] Pillsbury, CXXIII.
[7] Knight, *Land Grants*, 77.
[8] Pillsbury, CXXIV.
[9] Knight, *Land Grants*, 80; *School Laws*, 1897, 74.
[10] 6 S., c, 112, p. 847. Aug. 1, 1842.

Legislature to sell the remaining lands and to invest the proceeds in some productive fund; but each township should receive the income only from the sales of the lands belonging thereto; and the consent of the inhabitants of the townships was made a necessary prerequisite of sale. Furthermore, the unsold school lands were authorized to be leased for a term not exceeding four years.[11]

In the meantime, various congressional acts were passed concerning either the reservation of section sixteen from sale, or the selection of indemnity school lands. The former species of legislation characterizes the acts of May 8, 1822,[12] and June 26, 1834,[13] providing for the formation of new land districts; while the latter species of legislation characterizes the acts of March 2, 1821,[14] and July 20, 1840,[15] providing for the selection of indemnity school lands, in certain townships, in lieu of section sixteen otherwise disposed of. Similar privileges were accorded to certain townships, in Adams and Randolph counties respectively, by the acts of June 16,[16] and June 22,[17] 1860, relating to certain sixteenth section indemnity selections. It will be recalled that the general act of Congress authorizing the State to sell the school lands, provided for the leasing of the unsold sixteenth sections for a term not exceeding four years. This limitation was removed by an act of 1884, amending the enactment of 1843, and empowering the State to lease the unsold school lands in the most productive manner for any term of years.[18]

The early methods of managing the lands have been briefly indicated. Various laws were passed at different times concerning the investment of the proceeds of the sales. These laws varied as to the maximum amounts that might be loaned,

[11] 5 S., c, 33, p. 600. Feb. 15, 1843.

[12] 3 S., c. 124, s. 3, p. 701.

[13] 4 S., c. 76, s. 4, p. 687.

[14] 3 S., c. 18, s. 2, p. 618.

[15] 6 S., c. 89, p. 810.

[16] 12 S., c. 143, p. 44.

[17] 12 S., c. 185, p. 84.

[18] 23 S., c. 79, p. 41. June 12, 1884.

the nature of the securities in which loaned, the time limits of loans, and the rate per cent. of interest, which latter varied from twelve to six per cent.[19] Adverse criticism has been passed on the wisdom of these entry sales. However, Pillsbury maintains that "by the early sale of these lands, help was given to the cause of education just at the time when it was most needed."[20]

The Constitution of 1848 made no mention of this fund. The Constitution of 1870, however, provides for the faithful application of the proceeds of the various grants for school purposes to the objects for which such grants were made.[21] At the present time, the law provides that the township trustees shall have the management of the unsold sixteenth sections;[22] while upon the township treasurers devolves the custody of the funds and the income arising from rents, credit sales, and interests on loans.[23] A rate of from six to eight per cent. is charged on loans made prior to July, 1891; loans made after July, 1891, bear a maximum of seven per cent. interest.

Of the 985,066 acres of sixteenth section lands granted to Illinois, 7,213.96 acres remained unsold in 1895.[24] Up to 1896, the proceeds and interest accumulations of the lands sold had contributed most of the total of $6,016,083 to the credit of the "Township Fund." The unsold school lands[25] were then valued at $7,914,495.[26]

To this township fund have been added lands and moneys other than those derived from the sales of section sixteen, so that the writer has thus far been unable to separate the Government school endowment from such additions. Still, the fund has assumed vast proportions, and in 1896 produced a total in-

[19] Pillsbury, CXXVIII.

[20] Pillsbury, CXXVII.

[21] *Constitution*, 1870, Art. VIII, sec. 2.

[22] *School Laws*, 1897, 73.

[23] *Ibid*, Article IV.

[24] *Ill. Sch. Rep.*, 1894–95, 13.

[25] *Ibid*, 27.

[26] These unsold sixteenth section lands are mostly situated in the Chicago district of Cook county.

come of $889,818. The total expenditure in the State for schools during 1896 was $16,868,964,[27] of which the above income is but 5.27 per cent.

University Land Grant

The act of Congress of 1804, establishing the Kaskaskia land district in the western part of Indiana Territory, reserved from sale an entire township, which was directed to be located by the Secretary of the Treasury for the use of a seminary of learning.[28] Five years later, Illinois Territory was erected out of this portion of Indiana Territory. In 1815, Congress reserved the seminary lands that had been selected in Fayette County, from pre-emption;[29] and during the following year authorized the selection of other lands in lieu of such of the seminary lands as might "have been appropriated to satisfy ancient claims."[30]

The congressional act of 1818, providing for the admission of Illinois into the Union, granted to the State "thirty-six sections, or one entire township," to be designated by the President, which, together with the township reserved by the act of 1804, should be vested in the Legislature of the State, for the use of a seminary of learning.[31] The grant thus made was accepted by the constitutional convention during the following August. In 1821, the Legislature authorized the State auditor to lease the first seminary township.[32] During 1825 the Legislature provided for the appointment of commissioners of the school fund (q. v.), who were later also authorized to invest the moneys arising from the seminary lands in auditor's warrants.[33] In 1829, the State auditor was directed to sell the

[27] *Ill. Sch. Rep.*, 1894–96, 24.

[28] 2 S., c. 35, s. 5, p. 279. March 26, 1804.

[29] 3 S., c. 63, s. 3, p. 218. Feb. 27, 1815.

[30] 3 S., c. 101, s. 2, p. 307. April 26, 1816.

[31] 3 S., c. 67, s. 6, p. 430. April 18, 1818.

[32] Pillsbury, CXXXII.

[33] Pillsbury, CXXXIII.

unleased seminary lands, and a later act of the same session authorized the Governor to borrow, for the use of the State, all moneys accruing from the seminary grant, at six per cent. interest per annum.

The lands of the first seminary township having proved to be valueless, the Legislature petitioned Congress (1829) for a grant of other lands in lieu thereof.[34] This memorial was granted by an act of March 2, 1831, authorizing the location of an aggregate of one township of land in tracts of not less than a quarter of a section.[35] During the same year, an act of the State Legislature authorized the sale of the lands thus granted. Of the seventy-two seminary sections received by Illinois, all but four and one-half sections were sold, producing about $50,000.[36]

By a Legislative enactment of February 7, 1835, the commissioners of the State school fund were directed to loan the interest on the seminary fund to the common school fund for the use of the public schools. And on the establishment of the Illinois Institution for the Deaf and Dumb, in 1839, one-twenty-fourth of the interest on the seminary fund was directed to be paid to this institution.[37] In this manner was the use of the seminary fund misdirected by the State until 1857, when, by the act creating the Normal University, the current interest accruing on the seminary fund was directed to be applied to the support of the university.[38] Pillsbury estimates the amount thus borrowed from the fund, for other uses, which has never been repaid, at about $70,000.[39] It further appears that between 1867 and 1873 the Institution for the Deaf and Dumb received its quota of one twenty-fourth of the seminary fund interest; but in the latter year, the whole interest was appropriated to the Normal University. The application of the inter-

[34] *Amer. State Papers, Pub. Lands*, VI, 14.

[35] 4 S., c. 75, p. 475. [36] Pillsbury, CXXXIII.

[37] Pillsbury, CXXXIV. [38] *School Laws*, 1897, 108. [39] Pillsbury, CXXXV.

est so continued until 1877, when the income was equally divided between the State Normal University and the Southern Illinois Normal University, incorporated in 1869.[40]

In 1861, the unsold four and one-half sections previously mentioned were granted to the Illinois Agricultural College. These lands were sold for $58,000. Because the fund thus arising was mismanaged and squandered by the college, the State brought suit on the ground that a trust had been broken, and recovered about $9,000, which were added to the seminary fund.

It thus appears that the Institution for the Deaf and Dumb received about $3,000 from this grant during a period of twenty-four years (1839–57, 1867–73); that the common schools received about $67,000 during the period 1835–57; and that the Illinois Agricultural College made use of about $49,000. At the present time, the seminary fund amounts to $59,839, a debt upon the books of the State, upon which the State pays annual interest at six per cent., equally divided between the Normal University and the Southern Normal University.[41] The present Constitution (of 1870), it may be observed in passing, pledges the State to the faithful application of the proceeds of the seminary grant to the purposes of such grant.[42]

Three Per Cent. Grant

Among the various propositions submitted by Congress to the Illinois constitutional convention, in the act for the admission of Illinois, and accepted by that convention, was a proviso that three per cent. of the net sales of the public lands lying within the State should be appropriated by the Legislature for the encouragement of learning, of which one-sixth part should "be exclusively bestowed on a college or university."[43] To

[40] Pillsbury, CXXXV.

[41] *State Auditor's Rep.*, 1896, 161. [42] *Constitution*, 1870, Art. VIII, sec. 2.

[43] 3 S., c. 67, s. 6, p. 430. April 18, 1818.

provide for the execution of this grant, Congress passed a law in 1820 (December 12), directing the Secretary of the Treasury to pay such proceeds, stipulating that the moneys thus granted should be applied to the encouragement of learning as outlined in the act of 1818, and to no other purposes. Furthermore, the payment of such moneys to the State was conditioned on the transmission to the Secretary of the Treasury of an annual account of the application of the grant by the State.[44]

In 1821, the State treasurer was directed to receive these moneys, and to tranfer them to the Bank of Illinois, which institution was required to pay six per cent. interest on the deposits. Four years later, the commissioners of the school fund were placed in nominal control of the moneys, although the Bank retained possession.[45] By virtue of this same law, six per cent. interest on five-sixths of the three per cent. grant was directed to be apportioned among the counties for the support of schools, and the moneys thus accruing were denominated the "Common School Fund," while the one sixth part of this grant was named "The College Fund."

An act of 1829 authorized the Governor to borrow the moneys of the school fund for the use of the State, at six per cent., while the interest was ordered to be used for the purpose of refunding the money thus borrowed.[46] This was an obvious violation of the conditions of the congressional grant. Furthermore, the State ceased reporting to the Secretary of the Treasury an annual account of the method of disposing of the moneys as required by the congressional act of 1820. Hence the Secretary of the Treasury withheld the three per cent. proceeds; and, as the result of the controversy that arose concerning the validity of the restrictions on the independence of the State, Congress, in 1831, passed a law repealing so much of the act of 1820 as required an annual account of the application of these moneys to be transmitted by the State to the Secretary of the Treasury.[47]

[44] 3 S., c. 2, p. 610. [45] Pillsbury, CXXXVI. [46] *Ibid.*
[47] 4 S., c. 2., p. 431. Jan. 13, 1831.

The subsequent history of the "common school fund" and the "college fund" has been, in brief, as follows.[48] After 1825 the funds continued to remain a debt on the books of the State. In 1835, the Legislature enacted that the accrued interest on the common school fund should be added to the principal, and that the interest at six per cent. thereafter arising should be distributed among the counties for educational purposes. Between 1839 and 1872, one-fourth of one per cent. of the common school fund was annually appropriated to the uses of the Deaf and Dumb Institute at Jacksonville. With this exception, the moneys have been devoted to the support of common schools.

No college or university was established by the State until February, 1857. To the Illinois Normal University, then established, was appropriated the interest on the "college fund." Now, the interest that had accrued to this fund between 1836 and 1857 had been borrowed by the State for its own uses. This accrued interest was, by an act of February, 1861, recognized as a debt due by the State to the college fund, and by the same act was declared to be $98,956.82. Of this amount, $65,000 was appropriated towards the erection of the State Normal University buildings, while the remainder was added to the principal of the college fund. Between the years 1839 and 1857, one-twenty-fourth part of the interest on the college fund had been appropriated to the Illinois Institution for the Deaf and Dumb at Jacksonville, and was again so used between 1867 and 1873.[49] With this exception, the current interest on the college fund was used for the support of the State Normal University between the years 1857 and and 1877. Since the latter year (1877), the income arising from this source has been equally distributed between the State Normal University and the Southern Illinois Normal University.[50]

[48] Pillsbury, CXXXVII. [49] Pillsbury, CXXXV. [50] *Ibid.*

The last payment of the three per cent. on land sales was made by the General Government in 1863. Up to that time, $712,745.34 had been paid to the State. Five-sixths of this amount, plus the interest which has accrued to the credit of this portion, now constitute the Common School Fund, whose principal is $613,362.96.[51] The remaining one-sixth part, plus accrued interest, now constitutes a fund of $156,613.32, known as the College Fund.[52] On both these funds the State pays the various beneficiaries six per cent. interest per annum.

Surplus Revenue of 1836

This grant of $477,919.14 was accepted by the State on December 17, 1836.[53] On March 4, 1837, an act relating to common schools provided that the moneys which might be received by virtue of this distribution act of Congress, except such as had been already appropriated to purposes of internal improvement, should be added to and form a part of the common school fund of the State, and should be loaned to the State on the same terms on which the seminary and school funds had been loaned[54] (i. e., at six per cent. interest per annum).

The auditor of State, in a report dated July 12, 1837, says: "In conformity with what I perceive to be the proper construction of the acts [concerning internal improvements and common schools], I have added to the school fund, $335,592.32 of the surplus revenue, being the amount which the State owed the school, college and seminary funds at the time the said laws were passed.[55]

This fund of $335,592.32, like all the State educational trust funds, was used by the State for its own purposes, and remains a debt on the books of the State to the credit of the State common school fund, upon which the State pays six per cent. interest per annum.[56]

[51] *State Auditor's Rep.*, 1896, 161. [52] *Ibid.* [53] Bourne, 59.
[54] *Ibid*, 60. [55] Pillsbury, CXLII. [56] *School Laws*, 1897, 7.

Swamp Lands Grant

By an act of the General Assembly approved June 22, 1852, the swamp lands in Illinois, donated by Congress in 1850, were granted to the several counties in which they happened to be, for drainage purposes. The act provided that the county courts should dispose of only as much of the lands as might be necessary for the purposes of draining and reclaiming such lands; that the lands remaining unsold should be equally divided among the several townships within the county, and should constitute a part of the school fund in each township, to be disposed of in the same manner as the sixteenth section lands; but any county might dispose of the residue lands for the purpose of internal improvements, if the court should deem such application of the lands more expedient.[57]

In 1885, Pillsbury accounted for $449,919.22 which had been devoted to educational purposes from this endowment, although thirty counties had not been heard from. He then estimated the total value of the grant to education at over $600,000. As a matter of fact, the sales of swamp lands were credited either to the township school funds, or to the county funds.

Of this grant, the claims reported at the United States General Land Office on December 31, 1895, credited Illinois with 3,907,704 acres.[58] More specific data on this subject have not been available to the writer. But reasoning from Pillsbury's statement that up to 1882 the principal increase in the township school funds, exclusive of the sales of section sixteen, had been by additions from the proceeds of swamp lands,[59] and reasoning from the description of the township school funds to be found in the present school laws,[60] it may be safe to conclude that most of the $1,789,018.72, which was the "estimated value of other lands" to the credit of the town-

[57] *Ill. Sch. Rep.*, 1885–86, CLXXXV.

[58] *State Grants*, 8.

[59] *Ill. Sch. Rep.*, 1881–82, CXXV.

[60] *School Laws*, 1897, 71.

ship fund in 1895,[61] constitutes the value of the swamp lands then remaining unsold.

It is probable, then, that the swamp lands grant has contributed over $600,000 to educational purposes in Illinois, and something like $1,500,000 at least constitutes the value of the unsold swamp lands which are credited to such purposes.

Agricultural and Mechanical College Grant

During the session of the State Legislature following the passage of the act of Congress, the grant of 480,000 acres of public land scrip was accepted by the State in accordance with the conditions imposed.[62] Various institutions endeavored to secure the benefit of the endowment, but no definite action was taken by the Legislature until February 28, 1867, when an act incorporating the "Illinois Industrial University" was passed. Because of the financial inducements offered by Champaign county, the institution was located at Urbana, Champaign county. To the trustees of the university was intrusted the public land scrip for the use and benefit of the Industrial University.[63] On March 2, 1868, the institution was opened for work, and continued under the corporate name, "Illinois Industrial University," until 1885, when the Legislature changed its name to the "University of Illinois."

Of the 480,000 acres in scrip, the trustees had, by November, 1868, disposed of 380,000 acres for $250,192.41, the proceeds of which were invested in Illinois State, city and county bonds, paying from six to ten per cent. interest per annum.[64] About 25,000 acres were selected and retained in Nebraska and Minnesota, while the remainder of the scrip was sold within a very few years, swelling the endowment fund to $319,178.87.[65] At least as early as 1882 the Nebraska lands

[61] *Ill. Sch. Rep.*, 1894–96, 13.

[62] *Ill. Sch. Rep.*, 1863–65, 56. [63] *First Annual Rep. Board Trustees*, 1868, 9.

[64] *2nd Annual Rep. Board Trustees*, 1869, 57.

[65] *Ill. Sch. Rep.*, 1881–82, CXLI.

were ordered to be advertised for sale, and some years later the Minnesota lands were likewise ordered for sale, from which sources $114,948.63 have been added to the endowment fund.

The writer has been unable to determine definitely how much of the Nebraska and Minnesota lands remains unsold. It is highly probable, however, that some of these lands constitute a portion, at least, of the "11,000 acres of unimproved land worth approximately $140,000" still owned by the university.[66] In 1893, $393,250 of the endowment fund were invested in various county and school bonds, paying from four and one-half to seven per cent. interest per annum.[67] During the year ending August 31, 1895, the interest on the endowment fund, on land contracts, etc., amounted to $28,499.61, while the State appropriated $118,615.79 for the use of the University of Illinois.[68]

Agricultural Experiment Stations Act of 1887

This annual Government appropriation of $15,000 has been bestowed by the State upon the agricultural experiment station connected with the University of Illinois.

Government Endowment of 1890

The annual grant of the General Government by virtue of the act of 1890, has been appropriated by the State to the maintenance of the University of Illinois.

Miscellaneous

By a resolution of Congress of July 26, 1866, the Secretary of War was directed to furnish cots and bedding for 500 students, disabled in the Civil War, to the Illinois Soldiers' College and Military Academy.[69]

An act of August 8, 1888, relieved the Southern Illinois Normal University from money responsibility for ordnance issued to the institution and that had been destroyed by fire.[70]

[66] *Catalog. Univ. Ill.*, 1897–98, 21.
[67] *17th Rep. Bd. Trustees*, 99.
[68] *Ill. Sch. Rep.*, 1896, 138.
[69] 14 S., Res. 81, p. 366.
[70] 25 S., [Priv. Acts] c. 799, p. 1146.

CHAPTER X

ALABAMA

UNTIL March 3, 1817, when the Alabama Territory was created, the Territory constituted the eastern portion of the Mississippi Territory. Consequently, the various acts of Congress relating to education and to land grants for education in the Mississippi Territory (q. v.) previous to that date, were equally applicable to that portion of country out of which the Alabama Territory was formed.

Sixteenth Section Grant

An act of Congress of April 20, 1818, respecting the surveying and sale of the public lands in the Alabama Territory, provided for the usual reservation of the sixteenth section in each township for the support of schools.[1]

On March 2d of the following year, the congressional act to enable the people of the Alabama Territory to form a constitution and State government, became a law. Among the propositions offered to the constitutional convention of the Territory for their acceptance or rejection, occurred the usual stipulation that "the section numbered sixteen in every township, and where such section has been sold, granted, or disposed of, other lands equivalent thereto, shall be granted to the inhabitants of such township for the use of schools."[2] The State Constitution adopted in conformity with this law provided for the preservation of the school lands granted by the United States, and for the application of the funds arising to the object specified in the above grant.[3]

[1] 3 S., c. 126, s. 2, p. 467.

[2] 3 S., c. 47, s. 6, p. 491.

[3] *Constitution*, 1819, Art. VI.

During the first session of the Legislature (1819) an act was passed to provide for leasing the lands reserved for schools.[4] The three agents directed by law to be selected in each township were empowered to lease the school lands at such an annual rental as they might think proper, for a term of years which, in 1820, was limited to a maximum of six years.[5] In 1823 this law was amended so as to provide for the appointment of three school commissioners in each township, in lieu of the township trustees.[6]

On February 1, 1827, a petition from the Alabama Legislature was communicated to Congress, requesting permission to sell the lands granted for the use of schools,[7] which was granted.

By virtue of an act of Legislature of the following year (1828), the township commissioners were directed to sell the school lands in accordance with the conditions imposed by Congress in the above act, and to pay all moneys received from such sales into the State bank.[8] And the bank was also directed to pay interest at the rate of six per cent. on such moneys to the respective townships for the maintenance of schools. Furthermore, the faith and credit of the State were pledged for the payment of interest and the security of the school moneys thus deposited.

Various minor legislative enactments, slightly modifying and extending the provisions of the acts of 1823 and 1828, were passed during the following years. On December 25, 1837, the Legislature revised the laws concerning school lands.[9] In essence, and with but few changes, the provisions of the previous laws continued in force. This law provided for the appointment of three school commissioners in each township by the county courts, and for the election of three trustees in each district, the duties of each class of officials continuing the

[4] Aikin's *Digest*, 9. [5] *Ibid*, 370. [6] *Ibia*, 372.

[7] *Amer. State Papers, Pub Lands*, IV, 891.

[8] Aikin's *Digest*, 377. [9] Clay's *Digest*, 519.

same as before. The school lands might be leased by the township commissioners for a term not exceeding five years. Furthermore, these officials were directed to turn all moneys over to the State bank, which was required to pay eight per cent. annual interest on the school fund thus deposited. A few years later township trustees supplanted the township commissioners, and the same law enacted that the proceeds of the school lands should be paid into the State treasury.[10] To the various townships affected the Governor was directed to issue certificates of State stock bearing six per cent interest.[11]

During all these years no State system of free public schools had been in existence. It was not until February 17, 1854, that an act "to establish and maintain a system of free public schools in Alabama,"[12] was passed. Among the school revenues thus provided for occurs the reservation of the annual interest at six per cent. on the proceeds of the sales of the sixteenth sections in the several townships of the State. Moreover, the law created three groups of administrative school officers, viz., a State superintendent of education, three commissioners of free public schools in each county, and three trustees of free public schools in each township. Upon the superintendent of education devolved the control and management of the funds arising from the school lands,[13] while to the county school commissioners was entrusted the general oversight over the sixteenth section funds in the respective townships.[14] In 1856 the office of county superintendent was substituted for that of county commissioner.[15]

From the first report of the superintendent of education we learn that the amount of the "Sixteenth Section Fund" on deposit in the State treasury in December, 1854, was $1,244,793.36,[16] bearing interest at six per cent. The Civil War, a

[10] *Code of* 1852, 155.
[11] *Ibid.*, 127.
[12] *Acts* 1853–54, 8.
[13] *Ibid*, 13.
[14] *Ibid*, 11.
[15] Clark, 241.
[16] *Ala. Sch. Rep.*, 1855, 16.

few years later, brought the educational affairs in the State to a standstill. However, the Constitution of 1865 provided for the protection and proper application of the sixteenth section funds.[17] This Constitution as amended three years later recognized these trusts as a perpetual State fund, the income on which the State pledged itself inviolably to appropriate to educational purposes.[18] A similar recognition of this trust occurs in the present Constitution of 1875.[19]

Several additional Congressional acts remain to be noted:

An act of Congress of April 22, 1826, provided for the reservation of the sixteenth section from pre-emption by settlers.[20]

On July 4, 1836, Congress authorized the selection of one thirty-sixth part of the lands in the Chickasaw cession for the use of the schools therein.[21] In 1845 (February 26), this act was amended so as to authorize the Governor to select the school lands within this cession.[22] Owing to difficulty in selecting the school lands in the district ceded, Congress, on March 3, 1847, authorized other lands to be selected in any of the States or Territories.[23] By virtue of the Congressional acts of February 26, 1849,[24] and January 25, 1853,[25] the time within which such lands might be selected was extended three years. By an act of the General Assembly, the lands thus granted were authorized to be located in Louisiana and Arkansas, but, excepting selections in behalf of two townships in the Chickasaw cession, the general selections were never made.

Two other Congressional enactments remain to be mentioned. An act of April 20, 1854, authorized the selection of

[17] *Constitution*, 1865, Art. IV, Sec. 33.

[18] *Constitution*, 1868, Art. XI, Sec. 10.

[19] *Constitution*, 1875, Art. XIII, Sec. 5.

[20] 4 S., c. 28, s. 4, p. 155.

[21] 5 S., c. 355, s. 4, p. 116.

[22] 5 S., c. 25, p. 727.

[23] 9 S., c. 64, p. 202.

[24] 9 S., c. 72, p. 348.

[25] 10 S., c. 29, p. 153.

school lands for a certain fractional township,[26] while an act of June 22, 1854, authorized the selection of school land in lieu of the sixteenth sections within the "twelve miles square reservation."[27]

Now it must not be supposed that the sixteenth section fund has any actual existence. The State became the trustee, and her debts long since absorbed these moneys.[28] This fund, then, is a legislative fiction; and the nominal interest thereon must be raised by State taxation. At the present time the State pays interest at six per cent. per annum upon the moneys that have thus accrued from the sales of the sixteenth sections. Upon the State superintendent of education devolves the duty of keeping the accounts of these moneys, while the county superintendents are directed to examine into the sixteenth section funds of their respective counties.[29]

From the grant of sixteenth section lands Alabama received 902,774 acres,[30] of which all have not yet been sold. The amount of the principal of the sixteenth section fund credited to the various townships was $1,901,250 in 1896, producing an income of $113,894.[31] During the year 1895, there was raised throughout the State a total of $650,274, which included the interest on the section sixteen fund. Hence we perceive that this Government endowment contributed 17.5 per cent. of the school revenues.

University Land Grant

In the year (1818) following the creation of the Alabama Territory, Congress ordered the reservation from sale of an entire township, to be located by the Secretary of the Treasury, for the support of a seminary of learning in the Territory.[32] The Alabama enabling act of March 2, 1819, provided for the

[26] 10 S., c. 47, p. 275.
[27] 10 S., c. 62, p. 299.
[28] *Ala. Sch. Rep.*, 1882, 7.
[29] *School Laws*, 1895, Title I, Ch. I.
[30] Donaldson, *Public Domain*, 228.
[31] *State Auditor's Rep.*, 1896, 209.
[32] 3 S., c. 126, s. 2, p. 467.

reservation of an additional township of land for the use of a seminary, the entire seventy-two sections to be selected in tracts of not less than two sections each.[33] These lands were vested in the Legislature of the State for the use of such a seminary. The Constitution of 1819, created conformably to the enabling act, provided for the protection of the lands and for the proper application of the proceeds thereof to the exclusive support of the State university.[34]

An act of the first General Assembly (December 17, 1819) authorized the Governor to appoint three commissioners in each county in which seminary lands were located, who should lease such lands until January, 1821.[35] In 1820 (December 18), an act to establish a State university was passed, and two days later the Governor was authorized to appoint three commissioners in each county, as provided for in 1819, who should lease the seminary lands for a period not exceeding one year.[36] During the following year (December 18, 1821) the "trustees of the University of Alabama" were incorporated a body politic, and it was ordered that the proceeds of the sales of the seminary lands should be paid over to them and be vested by them in such funds as they might direct.[37] Furthermore, the lands were to be sold at a minimum price of $17 per acre, partly cash, partly credit.[38] In 1822 (December 24) this act was amended so as to vest the title to the seminary lands in the university trustees. This same act of 1822 contained provisions to enable purchasers or their heirs or assigns, at the expiration of the term of credit, to convert such purchases into leases for ninety-nine years, renewable forever, on the condition that the lessees should pay to the trustees interest at the rate of six per cent. per annum upon the amount of the original purchase money due at the time of converting such sale into

[33] 3 S., c. 47, s. 6, p. 491.

[34] *Constitution*, 1819, Art. VI. [35] Clark, 31.

[36] Aikin's *Digest*, 427. [37] *Ibid*, 428–430. [38] Clark, 32.

a lease.[39] Full power for the sale and the rental of the seminary lands was vested in the university trustees. Certain of the moneys were authorized to be invested in the stocks of the United States, while a sum not exceeding $100,000 might, at the discretion of the trustees, be invested in stock of the State bank when established.[40]

This latter provision anticipated the establishment of the State bank, for the act of 1823, establishing such an institution, provided that not more than $100,000 of the moneys arising from the sales of the seminary lands should form a part of the State bank.[41] This same law directed that State stock or State certificates of indebtedness, bearing six per cent. interest, should be issued to the university trustees as security for the moneys thus capitalized. In 1827 the president of the board of trustees was required to invest the university funds not then invested, in State stock.[42] This money was in reality loaned by the State to the State bank.[43] Six years later (1833), all the university land funds were directed to be converted into State bank stock, the faith and credit of the State being pledged for the safety of the funds thus invested.[44] In the meantime (1831) the university had been opened for work.

The report of a legislative committee, submitted in 1834, indicates that up to that time 42,540 acres had been sold for $377,680.52, leaving 3,539 acres unsold. Of these moneys. $215,977 were then reported to have been invested in stock of the State bank, while the remainder had been used for building purposes, etc.[45] As will be observed, the State as trustee of the congressional grant, had absorbed the greater portion of the principal of the proceeds of the university land sales for its own uses. This obligation was recognized by an act of 1848 (February 21), to liquidate the State's indetedness to the university, by declaring the university fund to be $250,000,

[39] Aikin's *Digest*, 432. [40] Aikin's *Digest*, 433. [41] *Ibid*, 56.
[42] Aikin, 435. [43] Clark, 35.
[44] Aikin, 435, sec. 50. [45] Clark, 41.

upon which the faith and credit of the State were pledged to pay an annual interest at six per cent.[46] Twelve years later (1860), the Legislature acknowledged the State's indebtedness to the university fund to be $300,000, and also re-enacted the interest provision of 1848.[47] This is, with a slight modification, the present status of the government endowment for a university in Alabama; and that modification consisted in an increase in the rate per cent. of interest paid by the State, to eight per cent. in 1876.[48]

A few constitutional provisions remain to be mentioned. The Constitution of 1865 provided for the protection of the university lands and funds.[49] The Constitution of 1868 contained a similar provision, and, furthermore, provided that the State board of education should function as a board of university regents.[50] This latter provision was modified by the Constitution of 1875, and the university was placed under the control of a board of university trustees.[51]

Events now bring us to the congressional act[52] of 1884 (April 23), granting to the State, for the benefit of the university, an additional grant of 46,800 acres as an indemnity for buildings and apparatus destroyed by the troops of the United States during the Civil War. This new grant was vested in the trustees of the university by an act[53] of the Legislature (1885). Of the two townships of land granted in 1884, 14,176 acres have been sold, and most of the proceeds have been used in the erection of buildings and in the restoration of the library and the scientific apparatus that had been destroyed. 600 acres have been leased, producing an income of $5,000 a year. The remainder of the grant is being judiciously

[46] Clark, 66. [47] *Acts*, 1859–60, 25.

[48] *Code*, 1876, sec. 1298; *Code*, 1886, sec. 1061; *Code*, 1896, sec. 3670.

[49] *Constitution*, 1865, Art, IV, sec. 33.

[50] *Constitution*, 1868, Art. XI, secs. 8, 10. [51] *Constitution*, 1875.

[52] 23 S., c. 27. p. 12. [53] Clark, 111.

held to await the enhancement of values. "The present policy is to increase *leases*, rather than to sell."[54]

It thus appears that of the first two townships, all the lands have been sold; that the State has used the proceeds for its own use, and acknowledges its indebtedness to the university to be $300,000, upon which it pays eight per cent. interest per annum, or $24,000. Furthermore, of the second grant of two townships, 31,904 acres remain unsold. The proceeds of this grant have been used for building and restoration purposes; and, moreover, about $5,000 a year arises from leases. The present income of the two grants may be roughly stated to be about $29,000 a year.[55]

Surplus Revenue of 1836

From this distribution Alabama received $669,088.95, which on December 16, 1836, was ordered to be deposited in the State bank and its branches.[56] In 1840, an act for the purpose of aiding in the establishment of schools in the several townships of the State, provided that the annual interest on the surplus revenue should be set apart to assist in paying the $200,000 yearly, which the above banks were required by this act to appropriate for the use of such schools. This law was repealed on January 21, 1843.

The act of February 15, 1854, "to establish and maintain a system of free public schools in Alabama," enumerated, among the sources of the "Educational Fund," "the annual interest, at eight per cent. on that portion of the surplus revenue of the United States deposited with this State under the act of Congress of the 23d of June, 1836."[57] The amendments of 1856

[54] President J. K. Powers has supplied the interesting information concerning this grant of 1884.

[55] The author has failed to mention in the body of this discussion that an act of Congress of May 24, 1828, authorized the university trustees to locate certain lands for the benefit of the university, in lieu of other lands previously selected. 6 S., c. 106, p. 383.

[56] Clay's Digest, 552.

[57] *Acts* 1853–54, 8.

and 1860, to this school law left this diversion of the surplus revenue undisturbed.[58]

In the code of 1867 we note that the interest at eight per cent. on the surplus revenue is mentioned among the sources of the State educational fund. This provision was omitted in the Constitution of 1868, but introduced into the school law framed a little later. The Constitution of 1875 mentions among the sources of the educational fund, "the income arising from the surplus revenue fund."[59] The school laws of 1876 and 1877 established the rate of interest paid by the State on this fund at four per cent.[60] The edition of the school laws of 1895 re-enacts these provisions, enumerating among the sources of the school fund, the annual interest at four per cent. on the surplus revenue of 1836.[61]

Bourne concludes that the State borrowed the fund from the State bank for its own uses prior to the Civil War,[62] while Eaton maintains that the principal of the surplus revenue fund was used by the State in the war of the rebellion.[63] How or when this money was appropriated by the State may be an open question; but it is nevertheless a debt acknowledged by the State to the credit of the "Educational Fund," upon which surplus the State pays $26,763.47[64] yearly, which must be raised by taxation.

Distribution Act of 1841

During several years prior to 1848, memorials had been presented in Congress from the State of Alabama, petitioning for an increase in the donation for public schools, particularly in behalf of the townships containing school lands of but little value.[65] In response to these petitions, Congress (August 11,

[58] Eaton, *National Aid*, 123.

[59] *Constitution*, 1875, Art. XIII, sec. 5.

[60] Bourne, 47.

[61] *School Laws*, 1895, 6.

[62] Bourne, 46.

[63] Eaton, *National Aid*, 124.

[64] *State Auditor's Rep.*, 1896, 207.

[65] Globe, XV, 86; XVIII, 361, 520.

1848) passed a law authorizing the State to apply the lands previously granted for internal improvement purposes (500,000 acres) for the use of the townships in which the school sections were valueless.[66]

The law of 1854 to establish a free school system, provided that the annual interest at eight per cent. on the "valueless sixteenth section" fund, which accrued from this Government grant, should constitute a portion of the "Educational Fund."[67] A similar statement concerning the sources of the State educational fund is to be found in the code of 1867.[68]

Statistics showing the number of acres thus diverted by the State for educational purposes, are not available to the writer; but the State auditor's report for 1869 indicates the amount of the principal of the "valueless sixteenth section fund" to have been $97,091.21 in 1860.

Swamp Lands Grant

Concerning this grant but little has been ascertained. An act of the Legislature of 1861[69] provided for the sale of the swamp and overflowed lands, apparently for the purposes specified in the congressional act of 1850. The next mention to be found concerning these lands is in the Constitution of 1868,[70] which sets apart the proceeds of the swamp lands as a portion of the educational fund. In the year 1875 a resolution was passed appropriating the proceeds of such lands, which then amounted to $27,343.31, for the care of indigent insane and idiotic persons in the State,[71] provided the consent of Congress were obtained. The writer has not learned of such assent having been given, nor has he found any reference to these lands in any of the State school reports since 1868. It seems quite probable that none of this grant was ever used for common school purposes, and that

[66] 9 S., c. 152, p. 281. [67] *Acts*, 1854–55, 8. [68] *Code*, 1867, 262.
[69] *Acts*, 1861, 12. [70] *Constitution*, 1868, Art. XI, sec. 10.
[71] *Acts*, 1874–5, 137.

the constitutional provision of 1868 was merely nominal in character, and negative in educational results.

Agricultural and Mechanical College Grant

By an act of the General Assembly of February 13, 1867, Alabama accepted the 240,000 acres accruing to the State for the establishment and maintenance of an agricultural and mechanical college.[72] Provisions were made for the disposal of the land scrip and for the proper keeping of the proceeds. The Constitution of 1868 contained a provision that the General Assembly should, as soon as practicable, establish an agricultural college on the basis of the Government endowment.[73] Four years later (1872), the General Assembly passed a law establishing such a college at Auburn, on the foundations of the East Alabama College, and to the Agricultural and Mechanical College of Alabama thus established were granted the proceeds of the funds arising from the Government grant.[74] The Constitution of 1875 provided that this institution should be under the management and control of a board of trustees.[75] An act of 1879[76] (February 10) pledged the faith and credit of the State for the payment of interest at the rate of eight per cent. per annum on the fund of $252,500, which represents the proceeds of the sale of the agricultural college scrip.[77]

Agricultural Experiment Stations Act of 1887

The annual Government appropriation of $15,000 to Alabama for the maintenance of an agricultural experiment station,

[72] *Acts*, 1866–67, 426.
[73] *Constitution*, 1868, Art. XI, sec. 14.
[74] *Acts*, 1871–72, 84.
[75] *Constitution*, 1875, Art. VIII, sec. 9.
[76] *Acts*, 1878–'79, 194.

[77] By virtue of an act of Congress of May 9, 1888, the Alabama Agricultural and Mechanical College was relieved from money responsibility for certain ordnance, loaned by the Government, which had been destroyed by fire. 25 S., *Private Acts*, c. 240, p. 1060.

has been vested in the Agricultural and Mechanical College at Auburn since 1889.[78]

Government Endowment of 1890

In 1891, Alabama's share of the grants of moneys made by the General Government for the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, was directed to be apportioned to the Alabama Agricultural and Mechanical College, and the Huntsville State Colored Normal and Industrial School, in the ratio of the number of each race of legal school age to the total population of school age in the State.[79] Since 1892, however, the appropriation for the benefit of the colored race has been vested in the Agricultural and Mechanical College for Negroes at Normal, Alabama.[80]

Miscellaneous

On May 24, 1828, Congress granted certain lands in the Huntsville Land District, amounting to 480 acres, to the trustees of the Lafayette Academy for the benefit of that institution.[81]

An act of March 2, 1829, authorized the trustees of the Valley Creek Academy to enter a quarter section of land at $1.25 an acre, for the use of the Academy.[82] While this act does not represent a donation of land for education, still it seems to indicate a special favor shown to the institution in whose favor it was passed.

The congressional act of March 3, 1881, establishing marine schools, provided that such a school should be located at Mobile.[83]

[78] *Acts*, 1888–'89, 1076. [79] *Acts*, 1890–'91, 433.

[80] *Rep. U. S. Commissioner Ed.*, 1891–'92, v. 2, 1193.

[81] 6 S., c. 128, p. 385. [82] 6 S., c. 49, p. 398. [83] 21 S., c. 141, p. 505.

APPENDIX

TABLE I.—SIXTEENTH SECTION GRANT

	Acres Granted.	Present Fund.	Present Income.	State School Revenue.	Per cent. Contributed by this Grant to State Revenue.
Alabama . . .	902,774	$1,901,250	$113,894	$650,274	17.5 (1896)
Illinois	985,066[a]	6,016,083	889,818	16,868,964	5.3 (1896)
Indiana	650,317	2,503,998	154,817	6,577,271	2.3 (1896)
Mississippi . .	824,825[b]	1,052,004	77,945	1,433,766	5.5 (1895)
Ohio	710,610	3,952,046	237,163	13,712,729	1.7 (1897)
Tennessee . .	800,000[c]	2,512,000	150,720	1,671,798	9.0 (1896)

[a] 7,214 acres unsold. [b] 95,000 acres unsold. [c] Estimated on basis of State's area.

TABLE II.—SWAMP LANDS GRANT

	Acres Credited.	Amount Used for Education.	Beneficiary.	Proceeds.
Alabama . . .	531,356	Nominally net.	Common schools.	?
Illinois	3,981,784	Total net.	Common schools.	$1,000,000 ±
Indiana . . .	1,377,727	Total net.	Common schools.	38,078
Mississippi . .	3,603,922	246,900± acres.	Common schools.	?
Ohio	117,931	Total net.	Common schools.	42,600

TABLE III.—UNIVERSITY LAND GRANT

	Beneficiary.	Acres Granted.	Present Fund.	Income.
Alabama . . .	Univ. of Ala.	92,160[a]	$300,000	$30,000
Illinois . . .	State Normal Univ. . . / Southern Normal Univ.	46,080	59,839	3,590
Indiana . . .	Indiana Univ.	46,246	134,354	8,039
	Vincennes Univ.	23,040	(e)	?
Mississippi .	Jefferson College	23,040	?	?
	Univ. of Miss.	46,080[b]	544,061	32,643
Ohio	Ohio Univ.	46,080	Leased.	10,000 ±
	Miami Univ.	23,040	Leased.	5,900 ±
Tennessee .	Univ. of Tenn.	50,000	(d)	?
	Univ. of Nashville . . .	50,000	(e)	?

[a] 31,904 a. unsold. [b] 23,020 a. unsold. [c] Proceeds of $72,500 apparently used up.
[d] $5,000 of the $60,000 proceeds still remain. [e] Proceeds of $40,000 used up.

TABLE IV.—SALINE LANDS GRANT

	Beneficiary.	Acres Granted.	Present Fund.	Remarks.
Indiana .	Common schools.	24,435	$85,000	State debt @ 6%.
Ohio . .	Common schools.	22,400	41,024	State debt @ 6%.

TABLE V.—AGRICULTURAL AND MECHANICAL COLLEGE GRANT

	Beneficiary.	Acres Granted.	Present Fund.	Income.
Alabama. . .	Ala. A. and M. Coll. .	240,000	$253,500	$20,280
Illinois . . .	Univ. of Ill.	480,000[a]	393,250	28,500
Indiana . . .	Purdue Univ.	390,000	340,000	17,000
Mississippi.	Miss. A. and M. Coll.	256,080[b]	98,575	5,915
	Alcorn A. and M. Coll.		113,575	6,815
Ohio	Ohio State Univ. . . .	630,000	547,776	32,861
Tennessee . .	Univ. of Tenn.	300,000	396,000	23,760

[a] 11,000 acres unsold, valued at $140,000. [b] Most of recent grant of 46,080 acres unsold.

TABLE VI.—DISTRIBUTION ACT OF 1841

	500,000 acres Grant.		Money Distribution.	Beneficiary.
	Acres devoted to Education.	Proceeds.		
Alabama . .	[unascertained]	$100,000±	. . . . .	Common schools.
Mississippi.	21,000±	?	. . . . .	Common schools.
Tennessee .	. . . . .	. . . . .	$14,852	Common schools.

TABLE VII.—SURPLUS REVENUE OF 1836

	Beneficiary.	Amount used for Education.	Amount received.
Alabama . . .	Common schools . . .	$669,086	$669,086
Illinois . . .	Common schools . . .	335,592	477,919
Indiana . . .	Common schools . . .	573,503	860,254
Ohio	Common schools . . .	See text.	2,077,260
Tennessee .	Common schools . .	See text.	1,433,757
	Academies		

TABLE VIII.—PERCENTAGE OF LAND SALES

	Beneficiary.	Amount received.	Remarks.
Illinois . . .	Common schools . . .	$613,363	3% land sales. State debt paying 6% int.
	State Normal Univ . .	156,613	
	Southern Normal Univ.		
Mississippi . .	Common schools . . .	82,502	5% land sales. For schools since 1882.

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